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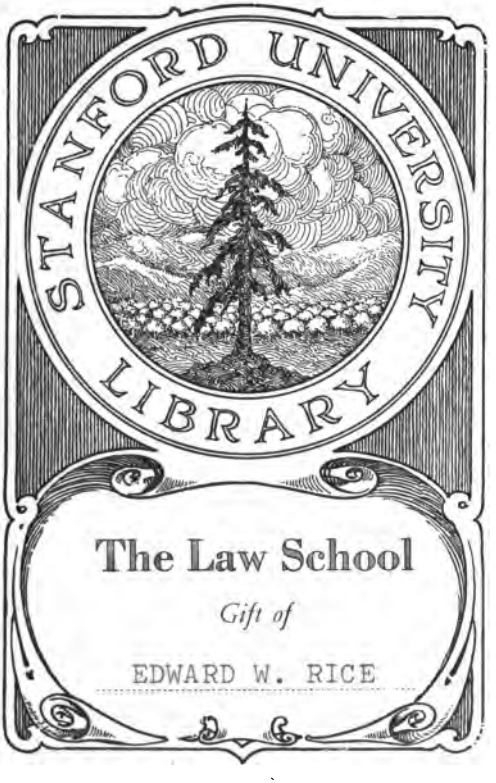
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TREATISE

ON

The Law of Limitation,

WITH AN

APPENDIX

OF

STATUTES AND FORMS.

BY

G. B. MANSEL, ESQ.
BARRISTER AT LAW.

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PREFACE.

Every exertion has been used in order to support, with suitable annotations, the various positions laid down in the following pages; and the instances in which any observations are introduced, unaccompanied with notes, are very rare. Where the references in the Law Reports having an immediate relation have been numerous, the more recent are preferred; but in that event, all the works in which they are cited will be found referred to. The references made to the Jurist are principally of very late decisions, and which are not to be found in any other Law publication. Wherever the whole of an Act of Parliament has any material connexion with the subject of Limitation, it is set out entire in the Appendix; and even where only particular clauses are essential, the latter have been copied in full. The Precedents contain all the Forms of Pleadings and of a practical kind, which are in ordinary use; and, in addition, some of a special nature; and the latter of which are rendered, by

the comparatively recent statutes relating to Claims as to Real Property, Records, and Specialties, very desirable for the Practitioner. The Form of an Entry upon the Roll, of Writs of Summons issued and continued for the purpose of preventing the operation of the statute, has been specially and carefully framed and annotated; and necessarily so, because any error in this statutable proceeding will probably defeat the very object of using it. Much labour and caution have been employed in endeavouring to explain the all important subject-matter of the following pages, and to render the Treatise an useful work of reference, both as regards the Law of Limitation and its practice in detail.

MIDDLE TEMPLE,
Trin. Term, 1839.

CONTENTS.

CHAP. I.

GENERAL NATURE OF LIMITATION.

Definition..... page 1
The Queen..... 4
Parties affected by..... 5
Custom—Prescription 6
Foreign Law 8
When it attaches 9

CHAP. II.

RESPECTING LAND.

Real Actions 11
Mixed and Personal Actions 12
Judgment Debts — Real Liens 15
Monies charged on Land .. *ib.*
Distress for Rent 16
Disabilities—Exceptions .. 17
Claims by Custom — Prescription—Grant 19
Ways—Easements—Watercourses 20
Access—Use of Light 21

CHAP. III.

PERSONAL ACTIONS.

Trespass 22
On the Case 23
Detinue 24
Replevin..... *ib.*
Preventing the Operation of the Statute (ex delicto) .. *ib.*
Debt on Specialties—Disabilities—Taking the Case out of the Statute 25
On Awards 25
On Contract 26
Taking the Case out of the Statute—Disabilities 27
Penal Actions..... 31
Preventing the Operation of the Statute (ex contractu). *ib.*
Set-off..... 35

CHAP. IV.

RELYING ON THE STATUTE IN PLEADING.

General Issue ..... page 36
Plea of the Statute..... 39
Replications 40

CHAP. V.

IN PROCEEDINGS AT LAW.

Computation of Time 42
Articled Clerks 43
Attornies 44
Tender 45
Ejectment ..... *ib.*
Summons 46
Appearance ..... *ib.*
Declaring 47
Pleading..... 49
Evidence..... 51
Cognovit..... 51
Special Jury ..... *ib.*
Proceedings for Trial..... 52
Proceedings after Trial 53
Bailable Process..... 57
Applications to the Court or a Judge 61
Error 63
Inferior Courts 66
Bankruptcy..... 67

CHAP. VI.

IN EQUITY.

Claims in Equity 69
Plea 73
Avoidance by Process 74
Appeal ..... *ib.*

CHAP. VII.

PROCEEDINGS OF A MIXED KIND.

Privy Council 77
Patents for Inventions 78
Copyright 79
Ecclesiastical Courts—Admiralty ..... *ib.*
Non-residence 81
Insolvent Debtors' Act 82
Non-claim ..... *ib.*
Election—House of Commons ..... *ib.*
Conveyance of Lands 83

CHAP. VIII.

OF A CRIMINAL KIND.

Informations ..... 85 | Proceedings before Justices 87
Indictments ..... 86 | Appeals to the Sessions 88

APPENDIX.

1. *Statutes.*

Mode of construction ..... 91—98
3 Edw. 1, c. 4, (Wreck) 99
13 Edw. 1, c. 5, (Advowson) ..... *ib.*
24 Hen. 8, c. 12, (Appeal) 100
23 Eliz. c. 1, (Ecclesiastical Offences) 101
31 Eliz. c. 5, (Informers) ..... *ib.*
43 Eliz. c. 5, (Inferior Court) 103
21 Jac. 1, c. 14, (Crown) 104
——— c. 16, (Personal Actions) 105
——— c. 23, (Inferior Court) 108
4 & 5 Will. 3, c. 18, (Information) 110
7 Will. 3, c. 3, (Treason) ..... *ib.*
7 & 8 Will. 3, c. 6, (Tithes) 111
8 & 9 Will. 3, c. 26, (Coining) ..... *ib.*
10 & 11 Will. 3, c. 14, (Error) ..... *ib.*
3 & 4 Anne, c. 9, (Promissory Note) 112
4 Anne, c. 16, (Personal Actions) 113
7 Anne, c. 25, (Coining) 114
8 Anne, c. 14, (Landlord and Tenant) ..... *ib.*
9 Anne, c. 14, (Gaming) 115
11 Geo. 2, c. 19, (Landlord and Tenant) 116
24 Geo. 2, c. 44, (Justice—Constable) 117
9 Geo. 3, c. 16, (Crown) ..... *ib.*
32 Geo. 3, c. 58, (Quo Warranto) 124
53 Geo. 3, c. 127, (Tithes) 125
——— c. 141, (Annuity) ..... *ib.*
9 Geo. 4, c. 14, (Acknowledgment) 127
2 Will. 4, c. 39, (Writs) 130
2 & 3 Will. 4, c. 71, (Prescription) 131
——— c. 100, (Modus—Tithes) 138
3 & 4 Will. 4, c. 27, (Real Property) 142
——— c. 42, (Executor—Specialty) 171
1 Vict. c. 28, (Mortgagee) 176

2. *Forms of Pleading.*

1. Pleas, Pleas in Bar, and Replications of the Statute..... 177
2. Replications, Pleading in answer 181
3. Rejoinders..... 185
4. Plea in Error..... 187
5. Entry on the Roll, Issue, Postea..... *ib.*
6. Crown Process 190
7. Pleas in Equity 191

ERRATUM.

P. 53, *for* " second sitting day," (referring to Liverpool,) *read* " first."

THE

LAW OF LIMITATIONS.

CHAP. I.

GENERAL NATURE OF LIMITATION.

1. *Definition* ..... *page* 1
2. *The Queen* 4
3. *Parties affected by* 5
4. *Custom—Prescription* 6
5. *Foreign Law* 8
6. *When it attaches* 9

1. LIMITATION is a species of prescription, and is of two kinds; the first, where it takes away the remedy and the right, as is the case with respect to interests in land; secondly, termed negative, where it takes away the remedy only.

At the common law the only limitation as to the time of making claims was, that it should be made within a year and a day before the dying seised; (*a*) and the Statutes of Limitation do not affect titles of honour, such as peerages or baronetcies; upon the principle that if the proofs made by the petitioner of his pedigree are clear, the contrary thereof, or an adverse possession thereto, ought not to be any bar; for there is not any person *in esse* interested under such

(*a*) Litt. s. 427.

possession; (*b*) nor estates tail, granted by the crown in recompense of services; (*c*) a rent charge; (*d*) or other rents created by act of parliament, (*e*) because the beginning thereof being given thereby, it forms the title, and is termed by Yelverton and Hutton Js. "*a rent coming out of the womb of parliament;*" for the act preserves seisin to the grantee, as he cannot have escheats or other profits; and therefore laches of time, though for a hundred years, will not prejudice his right. Neither do they extend to quit rents, (*f*) or to personal liens; (*g*) suits in the Admiralty Court for a mere maritime (*h*) claim, or to a right arising *super altum mare;* (*i*) to charities; (*k*) suits in the Ecclesiastical Court *de rationabili parte bonorum;* (*l*) for a pension, (*m*) as it must have been time out of mind; as to wills and testaments; (*n*) or intestacies; (*o*) for laying violent hands on a clerk in orders, (*p*) as this is a prosecution of a

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(*b*) Lords' Journals, vol. xxxi. 530; Barony of Willoughby of Parham, printed cases.

(*c*) 34 & 35 *Hen.* 8, c. 20; *Perkins* v. *Sewell*, 1 W. Bla. 654; *Mitford* v. *Elliott*, 1 J. B. Moore, 434.

(*d*) *Cupit* v. *Jackson*, M'Clel. 495; and see Mo. 190.

(*e*) *Fawkeners* v. *Bellingham*, Cro. Car. 80.

(*f*) 3 Lev. 21; *Eldridge* v. *Knott*, 1 Cowp. 214.

(*g*) 2 Saund. 67 a, n. (*z*); *Spears* v. *Hartley*, 3 Esp. 81.

(*h*) *Ewer* v. *Jones*, 2 Ld. Raym. 934, 6 Mod. 25; *Anon.* 11 Mod. 6.

(*i*) *Anon.* 1 Ventr. 308.

(*k*) *Att. Gen.* v. *Mayor of Coventry*, 2 Vern. 399.

(*l*) *Force* v. *Brown*, March, 129, 152.

(*m*) *Anon.* 1 Ventr. 265.

(*n*) Glanville, lib. 7, c. 6, 7.

(*o*) Selden's Works, vol. iii. 1672, 1676.

(*p*) *Hide* v. *Partridge*, 2 Salk. 227.

public nature; or a suit *pro reformatione morum* as for fornication; (*q*) when going only to deprivation, suspension or other punishment merely clerical; for a divorce; (*r*) restitution of conjugal rights; (*s*) as to the right in a pew, unless appurtenant to a messuage; (*t*) for the repair of the body or the nave of the church, (*u*) or other matter wholly ecclesiastical; (*v*) nor to accounts open and running, and which concern the trade (*w*) of foreign merchandize between merchant and merchant, their factors or servants; (*x*) applications of a summary kind against an attorney as to monies received by him for a client; (*y*) nor to matters of mere equitable cognizance in courts of equity, such as against trustees for a breach of trust, as where they sell an estate charged with the payment of money, and without their having paid the amount; (*z*) cases of constructive trust, as between trustee and *cestui que* trust; (*a*) suits for lega-

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(*q*) *Free* v. *Burgoyne* (in error), 2 Bligh, N. S. 65; 1 Dow, 115.

(*r*) *Mule* v. *Mule*, Delegates, 1710; *Lady Ferrers* v. *Lord Ferrers*, 1 Hagg. 130; *Dodwell* v. *Dodwell*, 13th June, 1789; *D'Aguilar* v. *D'Aguilar*, 5th Nov. 1793; Poynter on Marriage and Divorce, 182.

(*s*) *Mordaunt* v. *Mordaunt*, 1st June, 1794.

(*t*) 2 Saund. 175 c; *Mainwaring* v. *Giles*, 5 B. & A. 356.

(*u*) *Jeffery's* case, 5 Rep. 66 b.

(*v*) *Palmer* v. *Thorpe*, 4 Rep. 20 a.

(*w*) 21 *Jac.* 1, c. 16, s. 3, *Appendix*.

(*x*) *Sandys* v. *Blackwell*, Sir W. Jones, 401; *Webber* v. *Tyrrell*, 1 Lev. 287; *Cudmore* v. *Ellis*, 12 Mod. 579; *Skirme* v. *Merrick*, 2 Com. 710.

(*y*) *Ex parte Sharpe*, 5 Dowl. 717.

(*z*) *Milnes* v. *Cowley*, 4 Price, 103.

(*a*) *Ex parte Gowers*, 3 Mont. & Ayr. 172; *Phillips* v. *Mannings*, 2 Myl. & Cr. 309.

tees to refund; (*b*) of revivor; (*c*) or a bill for an account. (*d*)

2. The Statutes of Limitation do not extend to the Queen, unless expressly named therein; (*e*) for she is not, generally speaking, prejudiced by any neglect to pursue her right; (*f*) and there is not any lapse because she does not present a clerk to the bishop for institution; (*g*) nor does the lord of the manor gain any right to any of her goods which are wrecked, because she does not claim them and prove her property in them within a year and a day. (*h*) She may, at any distance of time, claim her franchises (*i*) and liberties, (*k*) heriots, (*l*) suit of court as incident to or belonging to land in common socage, (*m*) or honorary services to her in grand serjeanty; (*n*) and there is not

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(*b*) *March* v. *Russell*, 1 Jur. 588, C.; *Rowe* v. *Thorpe*, *id.* 771, V. C.

(*c*) *Earl Egremont* v. *Hamilton*, 1 Ball & Beatty, 531.

(*d*) *Canham* v. *Vincent*, 2 Sim. 277.

(*e*) Jenk. Cent. 212, 307; *The King* v. *Archbishop of York*, Willes, 533; *Colt* v. *Bishop of Coventry*, Hob. 146; *Lambert* v. *Taylor*, 6 D. & R. 188.

(*f*) *Baskerville's* case, 7 Rep. 28 a; 1 Leon. 180; 2 Leon. 50; *Rex* v. *Bishop of Winton*, Cro. Jac. 54.

(*g*) Jenkins, 244; Mo. 421; *Reg.* v. *Vaughan*, Cro. Eliz. 508.

(*h*) 2 Inst 168; Plow. 243.

(*i*) *Rex* v. *Havering Atte Bower* (Steward, &c.), 5 B. & A. 691; *Rex* v. *Hastings* (Mayor), *id.* 692, n.

(*k*) *Gibson* v. *Clark*, 1 Jac. & Walk. 159; 1 Show. 274.

(*l*) *The Queen* v. *Vaughan*, Cro. Eliz. 508.

(*m*) Litt. s. 119; Wright Ten. 142.

(*n*) 12 Car. 2, c. 24, ss. 5, 7; 3 Dy. 285 b.

any limitation to a suit by her against her accomptants, for an account of the profits taken by them for her use, (*o*) or for a balance found against their representatives; (*p*) as to a "petition of right" to her; (*q*) nor to indictments (*r*) or other prosecutions, as for a public nuisance. (*s*)

In proceedings at her suit, the commencement of them, if for penalties under penal laws, (*t*) is the issuing of the process; (*u*) in cases of extent from the date of the fiat (*v*) of the baron or other (*w*) judge; and in the Petty Bag Office from the issuing of the *scire facias*.(*x*)

3. The limitations, which in other cases we find now in force, affect only the parties and those who are privy to them in contract, and not third persons. (*y*) They arise under the provisions of acts of parliament, (*z*)

(*o*) *The Queen* v. *Vaughan*, Cro. Eliz. 507.

(*p*) *Att. Gen.* v. *White*, 2 Com. 432.

(*q*) *Willion* v. *Berkley*, Plowd. 241; *Walsingham's* case, *id.* 553; *Lord Paget's* case, 1 Leon. 194; *Venables* and *Serj. Harris's* case, 2 Leon. 122.

(*r*) *Dover* v. *Maestaer*, 5 Esp. 92; 2 Hale, 158.

(*s*) *Anon.* 12 Mod. 342; *Weld* v. *Hornby*, 7 East, 199.

(*t*) 18 *Eliz.* c. 5; 1 And. 48.

(*u*) *Att. Gen.* v. *Hall*, 11 Price, 760; Forest, 110.

(*v*) *Rex* v. *Mann*, 2 Stra. 749; *Rex* v. *Quash*, Parker, 281; *Rex* v. *Topping*, M'Clel. & Y. 544.

(*w*) 1 & 2 *Vict.* c. 45, s. 1.

(*x*) *Rex* v. *Bradford*, 2 Ld. Raym. 1327; *Rex* v. *White*, 2 Stra. 1219; Gude's Practice, vol. i. p. 233.

(*y*) *Quantock* v. *England*, 2 W. Bl. 702, 5 Burr. 2628; *Mavor* v. *Pyne*. 2 C. & P. 91, 3 Bing. 285.

(*z*) 2 Inst. 95; Co. Litt. 115.

both as regards legal claims, and equitable claims, arising out of legal titles and legal demands; (*c*) and except in cases where the act authorises the general issue, and the special matter to be given in evidence under it, the only mode of relying on the limitation is by special plea. (*d*)

4. The most distant species of limitation is that commonly known under the name of custom or prescription; and which, as in the case of gavel-kind, (*e*) must have arisen, or rather be fairly presumed to have existed, from "*time immemorial.*" This, in a legal sense, includes and denotes (*f*) the whole period of time from the first day of the reign (*g*) of Richard 1st. Seisin of homage and of services, such as suit of court, must be so presumed (*h*) and so pleaded. (*i*) The seisin of a superior service, when more than annual, is a seisin of all inferior services incident thereto, such as seisin of fealty, homage and escuage; (*k*) for the tenant swears to do all other services. Seisin of homage (*l*) includes all other services, as well superior as inferior; and by doing thereof, the tenant undertakes to perform all services. The statute 32 Hen. 8, c. 2, extends to of-

(*c*) 2 Sch. & Lef. 631; *Goodright* v. *Wells*, 2 Dougl. 771.
(*d*) *Merceron* v. *Merceron*, 5 Dowl. 271.
(*e*) Co. Litt. 140, 175 b.
(*f*) Stat. of Westminster 1, 3 *Edw.* 1, c. 39.
(*g*) Reeves's Hist. English Law, vol. ii. 124; July 7th, 1189.
(*h*) *Bevil's* case, 4 Rep. 10; Lit. s. 143.
(*i*) *Bennet* v. *King*, 3 Lev. 21; Ley, Livery, 20.
(*k*) *Bevil's* case, 4 Rep. 8 b.
(*l*) Anderson, 57; *Foster's* case, 8 Rep. 64 b.

fices with fees and profits, (*m*) and they must be alleged and proved within sixty years; (*n*) a long and continual possession raises a presumption of a grant even from the crown. (*o*) The statute 9 Geo. 3, c. 16, limits the claims of the crown to sixty years, (*p*) reckoned from the right first accruing, (*q*) or from the party answering as to the rents, or their being in charge, or standing *in super* of record, *e. g.* where the lands have been given, adjudged or decreed to the crown, upon a verdict, demurrer, hearing, or by the returns (*r*) made to the commissioners for auditing the public accounts of rents and profits forming part of the land revenue; even though they have not, within sixty years, received anything in respect of the revenue thereon, or instituted any proceeding or suit to recover any part. Suits and proceedings by the Queen, or on her behalf, upon penal statutes, must be commenced within two years next after a right to sue first accrued; (*s*) and where the crown has a right of presentation, upon the preferment of the incumbent to a bishopric, it must

(*m*) Lords' Journals, vol. xxxvi. 225.

(*n*) Bro. Stat. Lim. 16; *Dumsday* v. *Hughes*, 3 Bing. N. C. 439; 4 Scott, 209.

(*o*) *Bedle* v. *Bread*, 12 Rep. 4.

(*p*) *Goodtitle* v. *Baldwin*, 11 East, 488; and by the Dean Forest Encroachment Act, 1 & 2 *Vict.* c. 42, s. 3, the encroachments coloured *red* and *green*, in the Report of the Commissioners, are to be held freed from the title of the Crown.

(*q*) *The Queen* v. *Vaughan*, Cro. El. 507.

(*r*) *Att. Gen.* v. *Maxwell*, 8 Price, 76, n.; *Att. Gen.* v. *Eardley* (Lord), *ib.* 39.

(*s*) 31 *Eliz.* c. 5, s. 5; *Syvedale* v. *Sir Edw. Lenthal*, Cro. Jac. 365; *The Queen* v. *Franklin*, 6 Mod. 220; 2 Ld. Raym. 1038, *S. C.*

exercise its right during his life, (*t*) or, at the latest, before the church is again full.

The legal presumption "of life" is for seven (*u*) years, and "of the age" of a legatee as (*x*) stated in the will.

5. The laws of Scotland, and of foreign countries, respecting the limitation of rights, are not regarded here, (*y*) unless they extinguish the right; and if the limitation arise by prescription, the latter must be uninterrupted and peaceable. (*z*)

In Scotland this limitation is termed "Prescription." (*a*) The first is the "Positive," (*b*) and which renders valid all heritages, where a charter or instrument of seisin are shown on returns, or precepts of *clare constat*, and clad with forty years continual and peaceable possession, (*c*) and without interruption. Secondly, the "Negative," and which, after forty years, considers (*d*) all actions competent upon heritable bonds, reversions, contracts, or other matters whatsoever to have been extinguished, and views so

(*t*) *Rex* v. *Archbishop of Armagh*, 2 Stra. 841.

(*u*) *Holman* v. *Exton*, Carth. 246; *Nepean* v. *Knight*, 2 M. & W. 894.

(*x*) *Vulliamy* v. *Huskisson*, (Exch. Eq.) H. T. 1838.

(*y*) *Williams* v. *Jones*, 13 East, 439; *Huber* v. *Steiner*, 2 Scott, 305; *The British Linen Company* v. *Drummond*, 10 B. & C. 903.

(*z*) *Benest* v. *Pipon*, Knapp's Cases, 60.

(*a*) Bell's Dictionary, "Prescription."

(*b*) Act 1617, c. 12.

(*c*) Erskine, 3, tit. 7, s. 3; *Ramsay* v. *Caitchison*, January 22, 1791.

(*d*) Acts 1469, c. 29; 1474, c. 55, 1617.

long a silence as a dereliction, even though the debtor promises to pay it. (*e*)

In France the law of prescription affects the remedy only. (*f*)

In Jersey a continued and peaceable enjoyment for forty years, (*g*) except in the case of servitudes, gives a clear title.

By the statute of limitations in Jamaica (*h*) which bars the remedy, and all suits, claims, and demands thereon, a seven years' possession is converted into an absolute and indefeasible title; there is not any exception in favour of absentees.

6. Where a debt or claim is extinguished, (*i*) as when it comes within the provisions of 3 & 4 Will. 4, c. 27, (*k*), all remedy on it is at an end. (*l*) Unity of possession extinguishes rents, commons, all matters of charge and interest in other men's lands, (*m*) and a prescriptive right of way; (*n*) but not things of necessity (*o*) or collateral things, such as a watercourse,

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(*e*) December 24, 1728; *Presbytery of Perth* v. *The Magistrates of Perth.*

(*f*) Code Civil, L. iii. (tit. 20), of Prescription.

(*g*) Jersey Code, p. 223, *Anno* 1771; Basnage, tit. de Prescription, Art. 521.

(*h*) *Beckford* v. *Coade*, 17 Ves. jun. 87.

(*i*) Bac. Abr. ii. 447; Vaughan, 199.

(*k*) Sect. 34, *Appendix.*

(*l*) *Widdown* v. *Earl of Harrington*, 1 J. & W. 534.

(*m*) *Peers* v. *Lucy*, 4 Mod. 364.

(*n*) 1 Saund. 323 a, n. (*g*); *Wright* v. *Rattray*, 1 East, 377.

(*o*) Palmer, 445; 1 Saund. 323 a, *in notis.*

warren, or way of necessity, or matters of easement, such as the use of light and air. (*p*)

The statute commences running upon a cause of action arising (*q*) at a time when there is a person of capacity to sue. (*r*) In the case of an administrator the right reverts back to the death of the intestate, (*s*) and so in the case of a posthumous heir, to the death of his ancestor. (*t*) In computing the year, it runs from the same nominal day in one year to that in the next; as if the day of payment is the 1st day of January, 1839; the statutes bars the remedy upon the arrival of twelve o'clock at midnight (*u*) of the 1st day of January, 1845: where the right depends on the expiration of one year, a day is added, making together one year and a day; and therefore the running of any part of that day completes the limitation; *dies inceptus pro completo habetur:* and where it is reckoned from an act done, the day of that act is exclusive, (*x*), and the *Code civil* of France truly says, "Prescription is reckoned by the day, and not by hours." (*y*) It arises at the end of the last day. (*z*)

(*p*) Hobart, 131.

(*q*) *Dumsday* v. *Hughes*, 3 Bing. N. C. 439; 4 Scott, 209.

(*r*) *Murray* v. *East India Company*, 5 B. & A. 204.

(*s*) 3 & 4 Will. 4, c. 27, s. 7, *Appendix*; *Wankford* v. *Wankford*, 1 Salk. 300; *Rex* v. *Hungerford*, 2 Lutw. 1007, 1008; *Middleton's* case, 5 Rep. 28.

(*t*) *Bassett* v. *Bassett*, 8 Vin. Ab. 87; 3 Atk. 203; Bull. N. P. 10; 10 & 11 Will. 3, c. 16.

(*u*) Fountainhall, November 11, 1704, Blair.

(*x*) *Ogilvy* v. *Mercer*, Court of Session, December 10, 1793; House of Peers, March 1, 1796.

(*y*) L. iii. c. 5, s. 1, (2260).

(*z*) *Id.* 2261.

CHAP. II.

RESPECTING LAND.

1. *Real Actions* ..... *page* 11
2. *Mixed and Personal Actions* 12
3. *Judgment Debts — Real Liens* 15
4. *Monies charged on Land*
5. *Distress for Rent* 16
6. *Disabilities — Exceptions* 17
7. *Claims by Custom—Prescription—Grant* 19
8. *Ways—Easements—Watercourses* 20
9. *Access and use of Light*.. 21

1. THE only real (*a*) actions now remaining are a writ of right of dower, (*b*) *unde nihil habet*, and *quare impedit*.

The two former must be brought within twenty years next after a right to dower accrued. (*c*)

A writ of quare impedit, in order to bar a presentation by lapse, must be sued out within six calendar months next after the vacancy happened; (*d*) in case of abatement it may be continued by a writ of journeys-

(*a*) Bracton, 102; 3 & 4 Will. 4, c. 27, s. 36, *Appendix*.

(*b*) 3 & 4 Will. 4, c. 105; *The Earl of Buckinghamshire* v. *Drury*, Wilmot's Opinions and Judgments, 177.

(*c*) S. 3; and 3 & 4 Will. 4, c. 27, ss. 1, 2, *Appendix*.

(*d*) Stat. West. 2, c. 5, s. 2; *Anon.* 1 And. 30; Case, 70; *Grendit* v. *Baker*, Yelv. 7.

accounts. (*e*) The limitation is the period during which three incumbents (*f*) have each held *adversely* (*g*) to the right or gift of the claimant, and provided they amount together to sixty years, and reckoning a subsequent presentation upon a lapse (*h*) or on an avoidance. (*i*) Where 100 years have elapsed (*k*) from the time of a clerk obtaining possession adversely, the claimant cannot, unless a clerk on his presentation or gift has subsequently obtained possession of the benefice, maintain any writ.

2. The act of limitation now in force with respect to real property is 3 & 4 Will. 4, c. 27. By its provisions (*l*) every action, (*m*) entry, or distress to recover land (*n*) or rent, must be brought or made within twenty years next after the time when the right, or any right (*o*) accrued; and though the possession was not, in a technical sense, adverse, (*p*) except where a direct permission to occupy can be shown. (*q*) The right of an annuitant to distrain for an annuity given

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(*e*) Theol. Dig. I. ii. c. 42, s. 8; *Spencer's* case, 6 Rep. 9.

(*f*) 3 & 4 Will. 4, c. 27, s. 30, *Appendix*; *Paroch. Antiq.* 171.

(*g*) Adams on Ejectment, 46; Co. Lit. 242, 396.

(*h*) Sect. 31, *Appendix*; *Catesby's* case, 6 Rep. 61.

(*i*) *Armagh* (*Archbishop*) v. *Attorney General*, 2 Bro. P. C. 514.

(*k*) 3 & 4 Will. 4, c. 27, s. 33, *Appendix*.

(*l*) Sect. 2, *Appendix*.

(*m*) *Taylor* v. *Horde*, 1 Burr. 60; Sid. 432.

(*n*) Including dower; *Lindsey* v. *Lindsey*, 1 Salk. 291.

(*o*) Sect. 20, *Appendix*; 4 Bing. N. C. 799.

(*p*) *Nepean* v. *Doe*, 2 M. & W. 894; *Doe* v. *Edwards*, 5 Ad. & E. 25.

(*q*) *Doe* d. *Pritchard* v. *Janney*, 8 Car. & P. 99.

to him by will, first accrues (*r*) on the death of the grantor.

In the case of a forfeiture, (*s*) or breach of a condition, the right of the remainder-man and of the reversioner (*t*) first accrues (*u*) upon the estate or interest coming into possession; and provided the estate or land has not been recovered by reason of the forfeiture or breach of condition. In other cases the right of the reversioner first accrues at the time of his estate first becoming an estate or interest in possession, by the determination, from effluxion of time (*w*) or otherwise, of the estate in respect of which the lands or profits have been held, or the rent has been received; (*x*) where the land has been recovered by some person by reason of a right limited on or in defeasance (*y*) of the estate in possession, a person claiming, though barred as to an anterior right, may claim upon any other right consequent on such recovery. (*z*)

This limitation as to the claimant bars all in remainder, (*a*) and all others (*b*) whom he could, if in

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(*r*) *James* v. *Salter*, 5 Dowl. 496; 4 Scott, 168; 3 Bing. 544.

(*s*) West's Symb. Part I. lib. II. s. 156.

(*t*) Plowden, 151; 1 Inst. 183 b.

(*u*) 3 & 4 Will. 4, c. 27, s. 4, *Appendix*.

(*w*) *Villers* v. *Handley*, 2 Wils. 49; *Smith* v. *Parker*, 2 W. Bl. 1230; *Doe* d. *Hinton* v. *Role*, 3 Nev. & P. 648.

(*x*) Sect. 5, *Appendix*; *Chudleigh's* case, 1 Rep. 121.

(*y*) Sect. 20, *Appendix*.

(*z*) *Albany's* case, 1 Rep. 107; 3 Comm. 20, 119.

(*a*) Sect. 21, *Appendix*.

(*b*) Sect. 22, *id.*; and see 3 & 4 Will. 4, c. 74.

possession, have barred; (*c*) and where the parties claim under an assurance from a tenant in tail, (*d*) but not sufficient *per se* to bar the entail, (*e*) the limitation runs against the parties claiming after or in defeasance of such estate tail. (*f*)

Where rent to the yearly amount of 20*s*. (*g*) has been received under a valid lease in writing, the limitation runs from the time of the first receipt of it by the adverse party; but where the rent was less, then from the expiration of the lease; upon a tenancy from year to year without writing, (*h*) it arises at the end of the first of such years, or the last receipt of rent under it, which ever happens the last; and on a tenancy at will, the right first accrues at the end of the tenancy, or at the expiration of one year afterwards. (*i*)

When the right accrues to an archbishop, bishop, dean, prebendary, parson, vicar, master of an hospital, or other spiritual (*k*) or eleemosynary (*l*) corporation (*m*) sole (*n*), the limitation is thus: the period during which two persons in succession have held the office or benefice, and six years after a third person

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(*c*) *Hudson* v. *Benson*, 2 Lev. 28; T. Raym. 236.
(*d*) *Driver* v. *Hussey*, 1 H. Bl. 269; *Breden's* case, 1 Rep. 76.
(*e*) 3 & 4 Will. 4, c. 27, ss. 20, 23, *Appendix*.
(*f*) *Id.* s. 3.
(*g*) Sect. 9; 29 Car. 2, c. 3, ss. 1—3.
(*h*) 3 & 4 Will. 4, c. 27, s. 8, *Appendix*.
(*i*) Sect. 7; *Doe* d. *Thompson* v. *Thompson*, 6 Ad. & El. 721.
(*k*) 1 Kyd, 23; Burn, Eccles. Law, Monast, s. 5.
(*l*) 1 Kyd, 26; Cowel.
(*m*) *Id.* 13; *King* v. *Amery*, 2 T. R. 515.
(*n*) *Sutton's Hospital*, 10 Rep. 1; *Fulwood's* case, 4 Rep. 64.

has been appointed thereto, if amounting to sixty years; and if not, then such further time as will make up the sixty years.

These statutes extend to the right of the lord of the manor upon the forfeiture of a copyhold estate; (*o*) and a possession, in order to create a right, must be actual; and not constructive merely, (*p*) *e.g.* with respect to mines, by the possession of the manor only; and where it clearly appears that the title of a claimant is barred by the statutes of limitation, the Court of Queen's Bench will not grant a *mandamus* for his admission to a copyhold estate. (*q*)

3. Actions upon judgment debts (*r*) in courts of record, and for interest thereon, (*s*) must be brought within twenty years next after a present right to receive the same accrues; (*t*) and there is the same limitation as to actions and proceedings for the recovery of money secured by lien upon land. Such a lien signifies (*u*) a "*right to possess and retain*," and a covenant (*x*) to apply a certain portion of the rents and profits to a particular use gives a specific lien.

4. Arrears of rent, in respect of monies charged

(*o*) *Doe* v. *Hellier*, 3 T. R. 162; *Doe* v. *Danvers*, 7 East, 299.
(*p*) *Cutlen* v. *Johnson*, 2 Stra. 1142.
(*q*) *Rex* v. *Coggan*, 6 East, 431; 2 Smith, 417.
(*r*) 1 & 2 Vict. c. 110, ss. 18, 19.
(*s*) Sect. 17; *Pit* v. *Knight*, 1 Lev. 222.
(*t*) 3 & 4 Will. 4, c. 27, s. 40, *Appendix*.
(*u*) *Ex parte Heywood*, 2 Rose, 355.
(*x*) *Legard* v. *Hodges*, 3 Bro. C. C. 421; 1 Ves. 477.

upon, or payable out of land, or any damages in respect thereof, can only be recovered, whether by action or distress, within six years next after they become due; (*y*) or after an acknowledgment in writing, signed by the person by whom it was payable, was given to the person entitled, or his agent. Arrears of interest upon a legacy, or damages in respect of such interest, can only be recovered within six years after they become due, or an acknowledgment was given. But where a prior incumbrancer has been in possession of the land, or in the receipt of the profits, within one year next before an action brought by a second or other incumbrancer, the subsequent incumbrancer may recover the arrears for the whole term during which the first incumbrancer was so in possession, or in receipt of the profits.

5. A landlord may, within six calendar months (*z*) next after the determination (*a*) of the lease, *pur auter vie*, for years, or at will, (*b*) and during the continuance of his interest, and during the possession (*c*) of the tenant, make a distress upon the lands demised, and as if the term had not ended. And the executor or administrator of the landlord may, within six calendar months next after the determination of the term, and during the possession of the tenant, distrain upon the lands demised, for any term, or at will, for arrearages

(*y*) 3 & 4 Will. 4, c. 27, s. 42, *Appendix*.

(*z*) 8 Anne, c. 15, ss. 6, 7, *id*.

(*a*) 1 Inst. 45 b; *Walker* v. *Richardson*, 2 M. & W. 882.

(*b*) *Oland's* case, 5 Rep. 116.

(*c*) *Savage* v. *Dent*, 2 Stra. 1064; *Nuttall* v. *Staunton*, 3 B. & C. 51; 6 D. & R. 155.

due; (*d*) and actions concerning arrears of dower, and damages in respect thereof, must be brought within six years. (*e*)

6. There are certain disabilities and exceptions which, if existing at the time of the right accruing, suspend the operation of the statute (*f*) until ten years after the removal of the disability or impediment, so as it does not altogether exceed forty years from the accruing of the cause of action. (*g*) If a claimant while under disability or an impediment dies, proceedings must be had within ten years next after the accruing of such disability or impediment, or the death of the party. (*h*) The instant in which the disability is removed, the statute begins to run, but it is not affected by any subsequent disability. (*i*) And the disability of or an impediment to one or more of joint claimants, such as coparceners, will not impede the operation of the statute. (*k*) The rule is, that the statute begins to run so soon as there is in existence in England a plaintiff capable of suing, and that having begun to run, no subsequent interruption to the right of suing, even from causes beyond the controul of the plaintiff, will stop it; and therefore it has been held no answer, that after the statute had begun to run, and within the six years, the

(*d*) 3 & 4 Will. 4, c. 42, s. 38, *Appendix.*

(*e*) 3 & 4 Will. 4, c. 27, s. 41, *id.*

(*f*) S. 16, *Appendix.* (*g*) S. 17, *id.*

(*h*) S. 16; *Doe* v. *Jesson*, 6 East, 80; 2 Smith, 236.

(*i*) *Doe* v. *Jones*, 4 T. R. 300; *Salisbury* v. *Byolt*, 2 Swanst. *app.* 609: 1 Cha. Cases, 278; *Cotterell* v. *Dutton*, 4 Taunt. 826; *Doe* v. *Shaen*, 1 Selw. N. P. 148, (*n*).

(*k*) *Roe* v. *Rowlston*, 2 Taunt. 441; *Perry* v. *Jackson*, 4 T. R. 516.

debtor died, and that by reason of litigation as to the right of probate, an executor of his will was not appointed until after the expiration of the six years, and that the plaintiff sued such executor within a reasonable time after probate granted; (*l*) and this even though a personal representative of the debtor has not been constituted. (*m*)

The disabilities are, being under twenty-one years (*n*) of age; feme covert.

An idiot. (*o*) This means a person with a fatuity *a nativitate vel dementia naturali*, who never has any lucid intervals, *e.g.* cannot number twenty, tell the days of the week, does not know his own father or mother, or his own age, or the like. But he ceases to be so on giving sensible answers to questions. (*p*)

A lunatic. (*q*) This includes (*r*) imbecility of mind to the extent of incapacity; from any cause, as disease, age, or habitual intoxication. This disability is removed (*s*) upon the lunatic having a lucid interval effecting a restoration of mind, sufficient to enable him *soundly* to judge of his acts.

(*l*) *Rhodes* v. *Smethurst*, 4 M. & W. 42.

(*m*) *Freake* v. *Cranefeldt*, 3 Myl. & Cr. 499.

(*n*) Hobart, 95; *Anon.* 1 Salk. 44; Hob. 95.

(*o*) Bro. Idiot, 1; F. N. B. 233; *Frances'* case, Moor, 4, pl. 12; *Beverley's* case, 4 Rep. 123; *Holmes's* case, 1 Dyer, f. 25, pl. 164.

(*p*) *Dickenson* v. *Blisset*, Dick. 268.

(*q*) *Att. Gen.* v. *Parnther*, 3 Bro. C. C. 441; *Ex parte Cranmer*, 12 Ves. 450.

(*r*) *Ridgeway* v. *Darwin*, 8 Ves. 65; *Sherwood* v. *Saunderson*, 19 Ves. 285.

(*s*) *Beverley's* case, 4 Rep. 123 b; *Hall* v. *Warren*, 9 Ves. 611; *White* v. *Wilson*, 13 Ves. 88.

Absent beyond the seas, *i. e.* beyond Great Britain, Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent thereto, and being dominions of the Queen. (*t*) The removal of the disability here takes place on the "*first return from beyond seas.*" This expression is not to be grammatically considered, but looked at in general terms, and in its well known and popular sense; the mere treading on English ground is not to be considered as a return; as if a party was on board a ship off Dover, and there should be an alarm of fire, in consequence of which he goes on shore there, and stays the night, and returns to the vessel on the following morning, this is not considered a return within the statute. (*u*)

7. Claims having reference to a custom, prescription, or grant, as to rights of common, profits, and benefit from land, and not being either tithes, rents, or services, must be made within a limited time. (*x*)

Where such right, profit, or benefit, has been actually taken and enjoyed as of right, and without interruption (*y*) for thirty years, (*z*) and before the commencement of any action; (*a*) and so alleged in pleading,

(*t*) 3 & 4 Will. 4, c. 27, s. 19, *Appendix.*

(*u*) *Gregory* v. *Hurrill*, 1 Bing. 324; 8 Moore, 189.

(*x*) 2 & 3 Will. 4, c. 71, *Appendix.*

(*y*) *Dawson* v. *Norfolk, Duke of*, 1 Price, 246.

(*z*) *Willis* v. *Harrison*, 2 Jur. 1019, Exch.

(*a*) *Monmouthshire Canal Company* v. *Harford*, 1 C. M. & R. 614; *Tickle* v. *Brown*, 4 Ad. & E. 369; *Wright* v. *Williams*, 1 M. & W. 77; *Jones* v. *Price*, 3 Bing. N. C. 52; *Bensley* v. *Clarke*, 2 Bing. N. C. 705; *Richards* v. *Fry*, H. T. 1838, (Q. B.) 3 N. & P. 67.

it cannot be defeated by showing only that it was first taken at any time before the thirty years so above limited. A claim so arising more than thirty years and less than sixty years may be defeated in any other way by which the same can by law be defeated, as by showing leave and licence; (*b*) but if for more than sixty years, the right is absolute and indefeasible; unless there was a consent or agreement expressly made or given by deed or writing, and which is the only exception which can be made to such a right.

The words "*enjoyment as of right*" mean an enjoyment had not secretly, or by stealth, or by tacit sufferance, or by permission asked from time to time on each occasion, or even on many; but an enjoyment had notoriously without particular leave at the time, by a person claiming to use it without danger of being treated as a trespasser, as a matter of right; whether the right so claimed be strictly legal, as by prescription and adverse user, or by a deed, or be merely lawful, and was simply to excuse a trespass. (*c*)

8. Claims arising in reference to ways, easements, (*d*) watercourses, (*e*) or the use of water, are thus limited; when enjoyed without interruption for twenty years (*f*) they are not defeated by showing a first commencement before the twenty years, as above. But if they were

(*b*) *Campbell* v. *Wilson*, 3 East, 294; 2 Jur. 1019.

(*c*) *Tickle* v. *Brown*, 4 Ad. & E. 369; 1 Har. & W. 169.

(*d*) *Manning* v. *Wasdale*, 5 Ad. & El. 758; 1 N. & P. 172.

(*e*) *St. John* v. *Moody*, 2 Lev. 148.

(*f*) *Elliotson* v. *Feetham*, 2 Scott, 174; 1 Hodges, 259; 2 Bing. N. C. 134; *Bailey* v. *Appleyard*, 3 N. & P. 257; 4 M. & W. 245.

first enjoyed within forty years, they may be defeated by any other means, as by proving a leave, favour, or other matter, as opposed to a claim, or assertion of right; and after forty years, unless they have been enjoyed by a consent or agreement expressly given or made by deed (*g*) or writing, they become absolute and indefeasible.

9. Claims arising as to the access and use (*h*) of light for dwelling-houses, workshops, and other buildings, are thus limited; when they have been enjoyed and without interruption for twenty years, and notwithstanding local usages and customs, they become, unless enjoyed by consent or agreement, expressly made or given by deed, (*i*) or writing, (*k*) or there has been an interruption, (*l*) and with notice (*m*) for a year, absolute and indefeasible.

(*g*) Termes de la Ley; *Aldred's* case, 9 Rep. 57; *Moore* v. *Rawson*, 3 B. & C. 340; 5 D. & R. 234.

(*h*) 2 Rolle's Abr. 141; Shepherd's Touchstone, 231; *Bryan* v. *Whistler*, 8 B. & C. 293; 2 M. & R. 318; *Hewlins* v. *Shippam*, 5 B. & C. 221; 7 D. & R. 783; *Liggins* v. *Inge*, 7 Bing. 690; *Fentiman* v. *Smith*, 4 East, 187.

(*i*) *Hewlins* v. *Shippam*, 5 B. & C. 221; 7 D. & R. 783.

(*k*) *Bridges* v. *Blanchard*, 1 Ad. & E. 536; *Winter* v. *Brokwell*, 8 East, 309.

(*l*) 2 & 3 Will. 4, c. 71, s. 4, *Appendix*.

(*m*) *Plumb* v. *Flint*, 2 Anstr. 482; *Malloon* v. *Fitzgerald*, Skin. 128; Com. Dig. Pleader (C. 73); Chancery (4 C. 1), (4 I. 3).

CHAP. III.

PERSONAL ACTIONS.

1. *Trespass* ..... *page* 22
2. *On the Case* 23
3. *Detinue* 24
4. *Replevin* ..... *ib.*
5. *Preventing the Operation of the Statute (ex delicto).* *ib.*
6. *Debt on Specialties—Disabilities — Taking the Case out of the Statute* . 25
7. *On Awards, &c.* 25
8. *On Contract*..... 26
9. *Taking the Case out of the Statute—Disabilities*.. 27
10. *Penal Actions* 31
11. *Preventing the Operation of the Statute ex contractu* ..... *ib.*
12. *Set-off* 35

In the following instances of limitation the remedy by action is alone taken away, and not the right. (*a*)

1. As to actions of trespass when *quare clausum fregit*, and for taking goods and personal chattels; they must be brought within six years next after the accruing of a right of action. (*b*) Where an injury has been committed to the real estate of a deceased person while he was living and within six calendar months before his death, and provided he could if living have maintained an action of trespass, his personal representative

(*a*) *Heyling* v. *Hastings*, 1 Com. 54; *Quantock* v. *England*, 5 Burr. 2629; *Higgins* v. *Scott*, 2 B. & Ad. 413.

(*b*) 21 J. 1, c. 16, s. 3, *Appendix*.

may, within one year after his death, maintain such an action; (*c*) and where a wrong has been committed by a person within six calendar months next before his death to the real or personal property of another, an action of trespass may, within six calendar months next after his personal representative has administered to the estate, be maintained against him. (*d*)

Actions of trespass for assault, battery, wounding, and false imprisonment must be brought within four years next after the right of action arises. (*e*)

Every continuance of an imprisonment is deemed a fresh one, and gives an additional right of action; (*f*) and though the imprisonment is complained of as of one continued time, yet the defendant may divide (*g*) it, and plead the statute as to part, and then the plaintiff in his replication is to shew the continuance; and thus every act of detention constitutes a new imprisonment. (*h*)

2. Actions upon the case, including trover (*i*) and slander when actionable only by reference to some particular trade, or profession, or a special damage, must be brought within six years next after the right of action accrues; (*k*) as if A. beyond seas converts goods,

(*c*) 3 & 4 W. 4, c. 42, s. 2, *Appendix*.

(*d*) Rot. 81, B. R. West.; 2 Dy. 166 b; 7 Ad. & E. 426; 2 N. & P. 571.

(*e*) 21 Jac. 1, c. 16, s. 3, *Appendix*.

(*f*) *Bailey* v. *Warden*, 4 M. & S. 409.

(*g*) *Coventry* v. *Apsley*, 2 Salk. 420; Comb. 26.

(*h*) 1 Rol. 241.

(*i*) Lutw. 99; 2 Saund. 121.

(*k*) 21 Jac. 1, c. 16, s. 3, *Appendix*.

and after six years returns, and on a demand, refuses a delivery, this is a new (*l*) conversion. And every act of continuing a nuisance constitutes a fresh nuisance. (*m*) For words actionable in themselves, the action must be brought within two years next after the words are spoken. (*n*)

3. Actions of detinue must be brought, and, 4. plaints of replevin in the County Court, or other inferior court, must be levied within six years next after the accruing of a cause of action. (*o*)

5. The only method, in a case of tort, of preventing the operation of the statute, is by issuing in the superior Courts of law a writ of summons, (*p*) or by levying a plaint in an inferior one, (*q*) for a promise by the defendant to make compensation for a trespass will not suffice. (*r*)

6. Actions of debt for rent upon indentures (*s*) of demise, of covenant, or debt on bonds, or other spe-

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(*l*) *Savayn* v. *Stephens*, Cro. Car. 245, 334, *S. C.*

(*m*) *Withers* v. *Henley*, 1 Ro. 241; *Beswick* v. *Combdon*, Moore, 353.

(*n*) *Granger* v. *George*, 5 B. & C. 149; 7 D. & R. 729, *S. C.*

(*o*) 21 Jac. 1, c. 16, s. 3, *Appendix*.

(*p*) 1 & 2 Vict. c. 110, s. 2

(*q*) 2 Saund. 63 e.; *Story* v. *Atkins*, 2 Ld. Raym. 1430; Salk. 424, *S. C.*

(*r*) *Hurst* v. *Parker*, 1 B. & A. 92; *Boydell* v. *Drummond*, 2 Campb. 160.

(*s*) *Paddon* v. *Bartlett*, 3 Ad. & E. 884.

cialties, and of debt, and proceedings by writ of *scire facias* upon a recognizance must be brought within ten years (*t*) next after the 29th day of August, 1833; and in cases where that rule cannot apply, as where the right accrued within twenty years before the end of such ten years, then within twenty years after the accruing of the right of action. (*u*)

The existence of any of the following disabilities (*x*) or impediments, suspends the operation of the act; *i. e.* if the creditor was under the age of twenty-one years, a *feme covert, non compos mentis,* or out of Great Britain and Ireland, the islands of Man, Jersey, Guernsey, Alderney, and Sark, and islands adjacent, and being part of the dominions of the Queen; (*y*) or if the debtor was so resident. (*z*) Where an acknowledgment is made in writing by the debtor, charging him in direct terms, or by his agent, or if there has been a part payment, or part satisfaction of the principal and interest then due; the action may be brought within twenty years next after the time of such acknowledgment, part payment, or part satisfaction. But such special matter must be replied, (*a*) and in confession and avoidance.

7. Actions upon awards not being by specialty; for

(*t*) 3 & 4 Will. 4, c. 42, s. 3, *Appendix.*

(*u*) *Ibid.*; *Hartshorne* v. *Watson*, 2 Jurist, 155, C.P.

(*x*) *Ibid.* s. 4; *Miles* v. *Williams*, 10 Mod. 160.

(*y*) *Ibid.* s. 7; 4 Inst. 286; 1 Bla. Com. 93.

(*z*) 4 Anne, c. 16, s. 19; *Williams* v. *Jones*, 13 East, 439.

(*a*) 3 & 4 Will. 4, c. 42, s. 5, *Appendix.*

fines due on admission to copyhold estates, (*b*) for escapes on final process, and for monies levied by the sheriff under a writ of *fieri facias* (*c*) must be brought within six years; and actions by the party grieved (*d*) within two years next after the time when the right of action first accrued. (*e*) There is the same saving here as in the case of specialties, (*f*) but with reference to a limitation of six years only.

8. Actions of debt grounded upon a lending or other contract without specialty, and including an account stated; (*g*) and actions on foreign judgments; (*h*) and actions of assumpsit, now commonly termed "*on promises*," (*i*) must be brought within six years next after the time when a present right to sue first accrues. (*j*) This takes place, at the end of nine months, on a credit at six months and a bill of exchange at three months; (*k*) on a bill payable on demand, as soon as it is delivered to the payee; (*l*) if at a time specified after demand, as soon as it arrives; (*m*) and on sentence being

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(*b*) *Hodgson* v. *Harris*, 1 Lev. 273; 2 Saund. 67 a, n. (10).

(*c*) 1 & 2 Vict. c. 110, ss. 11, 12, 20.

(*d*) *Rann* v. *Green*, 2 Cowp. 474; 10 Mod. 121; 1 Ro. 90.

(*e*) 3 & 4 Will. 4, c. 42, s. 3, *Appendix*.

(*f*) P. 25.

(*g*) *Farrington* v. *Lee*, 1 Mod. 269; *Webber* v. *Tyrrell*, 1 Lev. 287.

(*h*) *Walker, Assignees, &c.* v. *Witter*, 1 Dougl. 1.

(*i*) 2 Will. 4, c. 39, sched.; *Piggott* v. *Bush*, 4 Ad. & Ell. 912.

(*j*) 21 Jac. 1, c. 16, s. 3; *Gould* v. *Johnson*, 1 Salk. 422.

(*k*) *Wittersheim* v. *Carlisle*, 1 H. Bla. 631; *Helps* v. *Winterbotham*, 2 B. & Ad. 431; *Mussen* v. *Price*, 4 East, 147.

(*l*) *Norton* v. *Ellam*, 2 M. & W. 461; 1 Jurist, 433. If payable at sight, see *Holmes* v. *Kerrison*, 2 Taunt. 323.

(*m*) *Thorpe* v. *Booth*, 1 Ry. & M. 388.

given, where the claim is for business done on an appeal; (*n*) for the consideration of an annuity, (*o*) on the setting aside of the deeds and other securities; in actions for negligence or a breach of duty, on its being committed; (*p*) by a surety against his principal, upon a default by the latter; (*q*) and on an agreement to account, (*r*) from the time of refusal. (*s*)

9. Where the claim is on promises for special damages, as on a contract to do an act at a specified time; it can only be preserved from the operation of the statute by process. (*t*)

In cases of debt on simple contract, and in actions "on promises," the operation of the statute is prevented by part-payment, whether of principal and interest, or principal only; (*u*) and though by only one of joint-debtors; (*x*) if of the principal, is sufficient, (*y*) though made after the time when the statute has barred the remedy (*z*) and taken effect; *e. g.* if by a bill of

(*n*) *Rothery* v. *Mummings*, 1 B. & Ad. 15.

(*o*) *Waters* v. *Mansell*. 3 Taunt. 56; *Cowper* v. *Godmond*, 3 Moore & Sc. 219.

(*p*) *Battley* v. *Faulkner*, 3 B. & A. 288; *Short* v. *Macarthy*, 3 B. & A. 626; *Howell* v. *Young*, 5 B. & C. 259; 8 D. & R. 14; *Brown* v. *Howard*, 4 J. B. Moore, 508; 2 B. & B. 73.

(*q*) *Gibbons* v. *M'Casland*, 1 B. & A. 690.

(*r*) *Topham* v. *Braddick*, 1 Taunt. 572; 1 W. Bla. 353.

(*s*) 2 Saund. 63 c., n. (*l*); *Short* v. *M'Carthy*, 3 B. & A. 626.

(*t*) *Boydell* v. *Drummond*, 2 Campb. 160; Carth. 136, 144.

(*u*) *Waters* v. *Tomkins*, 2 C. M. & R. 723, 1 Gale, 323.

(*x*) *Ex parte Woodman and Turner*, 3 Mont. & Ayr. 615.

(*y*) *Irving* v. *Veitch*, 3 M. & W. 90.

(*z*) *Bealey* v. *Greenslade*, 2 C. & J. 61; 2 Tyr. 121.

exchange, by the delivery of it to the creditor; (*a*) and a small sum generally on account, (*b*) the delivery of goods in reduction of the demand, (*c*) or payment of a dividend under a fiat in bankruptcy, (*d*) have the like effect. But a payment into Court upon a plea as to principal money only, does not affect the interest, (*e*) nor when made by a representative of a deceased co-contractor, does it affect the survivor. (*f*)

So also by a direct acknowledgment (*g*) in writing (*h*), signed by the debtor, and though by his initials only; (*i*) provided it amounts to a direct (*k*) promise to pay; and if put in evidence merely for this purpose, it does not require any stamp; (*l*) the terms of it must refer to the creditor (*m*) and not to a stranger, and be absolute, (*n*) as to the recognition of the debt; its amount

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(*a*) *Irving* v. *Veitch*, 3 M. & W. 90; *Jones* v. *Ryder*, 4 M. & W. 32.

(*b*) *Evans* v. *Davies*, 4 Ad. & E. 840; 2 Har. & W. 15.

(*c*) *Hooper* v. *Stevens*, id. 71; 1 Har. & W. 480.

(*d*) *Ex parte Doudney*, 15 Ves. 499.

(*e*) *Collyer* v. *Wilcock*, 4 Bing. 313.

(*f*) *Whitcomb* v. *Whiting*, 2 Doug. 651; *Atkins* v. *Tredgold*, 2 B. & C. 23; 3 D. & R. 200; *Burleigh* v. *Stott*, 8 B. & C. 36; 2 M. & R. 93; *Slater* v. *Lawson*, 1 B. & Ad. 396; *Wyatt* v. *Hoder*, 1 M. & Scott, 442; *Clarke* v. *Hooper*, 4 id. 353.

(*g*) *Bird* v. *Gammon*, 5 Scott, 213; *Morrell* v. *Firth*, 3 M. & W. 402; 8 C. & P. 246.

(*h*) 9 Geo. 4, c. 14, s. 1, *Appendix*; *Mountstephen* v. *Brooke*, 3 B. & A. 141.

(*i*) *Morris* v. *Dixon*, 4 Ad. & E. 845; 2 Har. & W. 57; *St. John* v. *Browton*, 2 Jurist, 413.

(*k*) *Routledge* v. *Ramsay*, 3 N. & P. 319; 4 Ad. & El. 845.

(*l*) Sect. 8; *Jones* v. *Ryder*, 4 M. & W. 32; 3 M. & Cr. 499.

(*m*) *Grenfell* v. *Girdlestone*, 2 You. & Col. 662.

(*n*) *Bird* v. *Gammon*, 3 Bing. N. C. 183; 5 Scott, 213.

may be proved by parol. (*o*) Where the construction turns upon a single letter, and without any other evidence to explain, it is a question of law for the judge; (*p*) but for the jury if it consists of several letters, or a letter in connexion with other evidence, or depends on the meaning of a mercantile document. A mere parol statement of an antecedent debt, without any new contract or consideration, (*q*) or an account stated, though in writing, will not suffice for this purpose; (*r*) nor a judgment or sentence in France, or other foreign country; for here it is considered only as a simple contract debt; (*s*) nor a suit in equity, (*t*) though a receiver was appointed; (*u*) and the fact of the creditor becoming bankrupt, (*x*) or a mere demand, (*y*) will not be of any avail, nor has a direction for the payment of debts in a will of personal estate any effect. (*z*)

There are certain disabilities and impediments which, while they exist, (*a*) prevent the operation of the statute; (*b*) as if the creditor is, when the right accrues,

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(*o*) *Lechmere* v. *Fletcher*, 1 C. & M. 623; *Dickenson* v. *Hatfield*, 2 M. & M. 141; *Chesling* v. *Dalby*, 2 You. & Col. 170.

(*p*) *Morrell* v. *Frith*, 3 M. & W. 402; 8 C. & P. 246; *Taylor* v. *Dering*, E. T. 1838 (Q. B.); *Brown* v. *Brown*, 2 Jurist, 255.

(*q*) *Jones* v. *Ryder*, 4 M. & W. 32.

(*r*) *Williams* v. *Griffiths*, 2 C. M. & R. 45; 3 N. & P. 319.

(*s*) *Duplein* v. *De Roven*, 2 Vern. 540; *Price* v. *Dewhurst*, 8 Sim. 279.

(*t*) *Anon.* H. 1736; 2 Atk. 1.

(*u*) *Anon.* H. 1737; 2 Atk. 15.

(*x*) *Gray* v. *Mendez*, 1 Stra. 556; 3 P. Wms. 143.

(*y*) *Hodle* v. *Healey*, 1 Ves. & B. 540.

(*z*) *Freake* v. *Cranefeldt*, 3 Myl. & Cr. 499.

(*a*) 21 Jac. 1, c. 16, s. 7, *Appendix;* 1 Sid. 453.

(*b*) *Hall* v. *Wybank*, 3 Mod. 311; Carth. 136; 1 Show. 98.

under the age of twenty-one years, *non compos mentis*, a *feme covert*, in prison, (*c*) or beyond seas; (*d*) and there is the same provision (*e*) in case of the debtor being beyond seas. The statute does not run as against a foreigner (*f*) until he comes to England, nor against a debtor (*g*) where the right of action arises within the jurisdiction of the Supreme Court at Calcutta and while the parties are resident there. The limitation is not suspended in the case of several joint creditors; unless they are all under disability; (*h*) and a subsequent disability will not affect the limitation. (*i*)

The statute 21 Jac. 1, c. 16, s. 4, (*k*) provides, that if judgment be given for the plaintiff, and it is afterwards reversed or arrested, or if an outlawry against the defendant be reversed, a new action may be commenced within one year afterwards; and where at the death of the deceased the six years had not elapsed; his personal representative may, within one year afterwards, take out process; (*l*) and if he dies, his executor has the same time allowed to him. (*m*) If a plaint is removed from an inferior Court into a superior Court,

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(*c*) *Piggott* v. *Bush*, 4 Ad. & E. 912; 2 Har. & W. 28.

(*d*) 3 & 4 Will. 4, c. 42, s. 7, *Appendix*; *Strithorst* v. *Græme*, 2 W. Bla. 723; 3 Wils. 145.

(*e*) 4 Anne, c. 16, s. 19, *Appendix*.

(*f*) *Strithorst* v. *Græme*, 3 Wils. 145; 2 W. Bla. 723.

(*g*) *Williams* v. *Jones*, 13 East, 439; 1 Atk. 82.

(*h*) *Smith* v. *Hill*, 1 Wils. 134; *Doe* v. *Jones*, 4 T. R. 300.

(*i*) *Perry* v. *Jackson*, 4 T. R. 516.

(*k*) *Karver* v. *James*, Willes, 255. This and the last section extend also to actions *ex delicto*, see p. 22, 24.

(*l*) *Lambe* v. *Finch*, W. Jones, 312.

(*m*) *Wilcocks* v. *Huggins*, Fitzg. 170; 2 Stra. 907.

the limitation is calculated from the levying the plaint; provided the whole proceedings are set out in the replication; (*n*) and the same principle holds where conusance is demanded; (*o*) or a suit concerning the revenue is removed into the Exchequer; (*p*) or where the grant of probate or of letters of administration is delayed, and without default in the party. (*q*)

10. Actions of debt, bills, and informations for forfeitures and penalties, given by penal statutes, either to the informer alone, or *qui tam*, must be commenced by him within one year next after the time when the forfeiture or penalty was incurred, and a right to sue thereon first accrued. (*r*)

11. In order to restrain the operation of these statutes by process, it must be actually sued out; (*s*) and the fact of its being impossible to do so, as from the offices being closed, or some other cause, will not avail. The course is by issuing a writ of summons, (*t*) and which, though informal, will suffice; (*u*) or when issued for this purpose, it may be amended (*x*) on the

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(*n*) *Matthews* v. *Phillips*, 1 Salk. 424; *Highwood* v. *Barlow*, Barnes, 421; *Clarke* v. *Harbin*, id. 90; *Turner* v. *Bean*, id. 345.

(*o*) Jenk. Cent. 31; Mo. 276, 603.

(*p*) *Hammond's* case, Hard. 176; 1 Ro. 290; and *Appendix*.

(*q*) Bac. Abr. III. 514 (5).

(*r*) 31 Eliz. c. 5, s. 5; *Franklyn's* case, 1 Mod. 68.

(*s*) *Prideaux* v. *Griffiths*, 2 C. M. & R. 45; 2 Ch. C. 217.

(*t*) 1 & 2 Vict. c. 110, s. 2; 2 Will. 4, c. 39, s. 1; *Finnie* v. *Montague*, 5 B. & Ad. 877; *Thompson* v. *Dicas*, 2 Dowl. 93.

(*u*) *Leadbetter* v. *Markland*, 2 W. Bla. 1131.

(*x*) *Lakin* v. *Watson*, 2 Dowl. 633; and see 2 Dowl. 96.

terms of payment to the defendant of his costs thereon; and if issued for a debt, with liberty for him to pay the debt and costs as indorsed, within four days after amendment made and costs of it paid. (*y*) But a re-sealing, without leave of the Court, will not have this effect, for it only operates as a new writ. (*z*) If the defendant is served with a copy of the writ, (*a*) and he enters an appearance, (*b*) the cause will be fully in Court; and so also if he enters it on process of distringas (*c*) against him. But where he does not enter an appearance, the plaintiff can only do so (*d*) if the copy of the summons was served, and the day of service was within three days indorsed on the summons by the party serving it. (*e*) If a levy was made under the distringas, (*f*) the plaintiff may, as a matter of course, enter an appearance for the defendant; (*g*) but not if *nulla bona* was returned, except by order of a judge or the Court. (*h*) If the service cannot be effected, and the Court will not allow it to be made upon

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(*y*) *Bodington* v. *Woodley*, 1 Jurist, 960; *Partridge* v. *Welbank*, 5 Dowl. 93.

(*z*) *Siggers* v. *Sanson*, 2 Dowl. 745; *Glenn* v. *Wilkes*, 4 Dowl. 322; *Leigh* v. *Leigh*, 4 Dowl. 650.

(*a*) 12 Geo. 1, c. 29, ss. 1, 2; *Morris* v. *Coles*, 2 Dowl. 79; 3 M. & Sc. 194.

(*b*) 2 Will. 4, c. 39, s. 2; 2 Jurist, 808, 946.

(*c*) Sect. 3; *Tucker* v. *Brand*, 4 Dowl. 411.

(*d*) *Roberts* v. *Spurr*, 3 Dowl. 551; 5 Dowl. 150; 1 Har. & W. 137.

(*e*) R. M. 3 Will. 4, (3); *Brook* v. *Edridge*, 2 Dowl. 647.

(*f*) *Esdaile* v. *Marshall*, 2 Jurist, 182.

(*g*) 2 Will. 4, c. 39, s. 3; *Johnson* v. *Smealy*, 1 Dowl. 526; *Page* v. *Hemp*, 4 Dowl. 203; *Tucker* v. *Brand*, id. 411.

(*h*) Sect. 3; *Copeland* v. *Neville*, 4 Dowl. 51.

an agent, (*i*) the process must be continued. The writ of summons continues in force for four calendar months from its date, and including the day of its date. (*k*) But the writ of capias issued under an order of a judge, and under the recent act, (*l*) continues in force only for one calendar month, and including the day of its date. (*m*) The first writ issued, and every writ in continuation must be returned *non est investus*, (*n*) and entered upon the record (*o*) within one calendar month next after the expiration of the last precedent writ, and also the date of its expiration. Every writ in continuation must substantially (*p*) conform to the last preceding process, and be issued within one calendar month next after the expiration of the foregoing writ, and must contain a memorandum indorsed thereon, or subscribed thereto, and specifying the date of the first writ, and return to be made.

The plaintiff must within one year next after the service of the copy of the writ of summons upon the defendant, declare against him, or the action will be out of Court; (*q*) where the defendant is not so

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(*i*) *Frith* v. *Lord Donegal*, 2 Dowl. 527; 6 Dowl. 52.

(*k*) 2 Will. 4, c. 39, s. 10; 3 Bing. 478; 4 Scott, 256.

(*l*) 1 & 2 Vict. c. 110, s. 3; 4 M. & W. 351; 2 Jurist, 970.

(*m*) Sect. 34, and Sched.

(*n*) *Gregory* v. *Desanges*, 5 Dowl. 193; 3 Scott, 334; *Stanway* v. *Perry*, 2 B. & P. 157; *Taylor* v. *Hopkins*, 5 B. & A. 489; *Nicholson* v. *Leman*, 2 Dowl. 296; 6 T. R. 617.

(*o*) *Garlick* v. *Sangster*, 9 Bing. 48.

(*p*) *Corbett* v. *Bates*, 3 T. R. 660; *Beardmore* v. *Rattenbury*, 5 B. & A. 452; *Hawkins* v. *Clark*, 2 Jurist, 15; R. M. 3 Will. 4, s. 7.

(*q*) R. H. 2 Will. 4, (35); *Culliford* v. *Blandford*, Carth. 333;

served, and a distringas is issued, and an appearance is entered thereon, the time reckons from the leaving of the copy at the last of the three calls. (*r*) But in none of these cases can the declaration be delivered between the 10th day of August and the 24th day of October in any year. (*s*)

Where the action is removed out of an inferior Court, the plaintiff may declare at any time (*t*) within one year next after the return of the writ or process issued for the removal. (*u*) In ejectment the commencement of the action is by the service of a copy of the declaration; and a motion for leave to sign judgment against the casual ejector must, where the venue is in London or Middlesex, be made in the next term; (*x*) but in a country cause it may be made in the second term, provided it be an issuable one; (*y*) the Court will allow the declaration and other proceedings to be amended, if necessary. (*z*)

Hardyman v. *Whittaker*, note, 2 East, 574; *Abbots* v. *Kelly*, 5 Dowl. 478; *Stanway* v. *Perry*, 2 B. & P. 157.

(*r*) *Mason* v. *Lee*, 5 N. & M. 240; *Hill* v. *Moule*, 2 Dowl. 10; *Anon.* 1 H. & W. 380; *Hocker* v. *Townsend*, 1 Hodges, 204.

(*s*) 2 Will. 4, c. 39, s. 11.

(*t*) *Dod* v. *Grant*, 4 Ad. & E. 385; 1 Har. & W. 711.

(*u*) *Norrish* v. *Edwards*, 3 Ad. & E. 733; 1 Har. & W. 437.

(*x*) R. 1 Vict. 4 Bing. N. C. 366; 5 Scott, 476; 6 Dowl. 464; *Doe* d. *Davis* v. *Roe*, id. 461; *Doe* d. *Barker* v. *Roe*, 2 Jurist, 944, B. C.

(*y*) *Doe* d. *Barker* v. *Roe*, 4 Bing. N. C. 675; *Doe* d. *Croone* v. *Roe*, 6 Dowl. 270.

(*z*) *Small* v. *Cole*, 2 Burr. 1162; *Doe* d. *Hardman* v. *Pilkington*, 4 Burr. 2448; 1 D. & R. 173; 3 Dowl. 336.

12. With respect to the remedy by way of set-off or mutual credit; those debts which are affected by the act as to real property, are by its express provisions extinguished: (*a*) and the statute 9 Geo. 4, c. 14, (*b*) expressly enacts that a debt shall not be set up by way of set-off, where the statute of limitations applies to it; and which is the case where it does not admit of a remedy by action at the time of pleading the plea, and in which the existence of the debt must be averred. (*c*)

The proper form of replication to such a plea is not —never was indebted; (*d*) or *nil debet;* (*e*) but setting out the answer as to the limitation in express terms; (*f*) and where a written instrument, as a promissory note, is set out in the plea, this form of replication virtually admits that the set-off once accrued, and as stated therein. (*g*)

(*a*) 3 & 4 Will. 4, c. 27, s. 34, *Appendix.*

(*b*) Sect. 4.

(*c*) *Dendy* v. *Powell*, 3 M. & W. 442; 6 Dowl. 577; 1 C. & M. 46.

(*d*) *Brown* v. *Daubeny*, 4 Dowl. 585.

(*e*) 1 Saund. 283; Plow. 56; 1 Har. & W. 646; 1 Sid. 253.

(*f*) *Chapple* v. *Durston*, 1 C. & J. 1; and see *Appendix.*

(*g*) *Gale* v. *Capern*, 1 Ad. & E. 102.

CHAP. IV.

RELYING ON THE STATUTE IN PLEADING.

1. *General Issue* ....page 36
2. *Plea of the Statute* 39
3. *Replications*..... 40

1. THE protecting clauses in acts of parliament, with reference to "any thing done in pursuance of this act, or in execution of the powers," apply to all cases, (*a*) where the parties are intending to act on powers given by them, and not merely (*b*) using them as a cloak for their own private purposes. The fact of the parties misrepresenting the state of facts to the party grieved will not alter it. The injury arises on the act being done, as upon (*c*) the "*taking away of the land;*" and when there is a continuance of such damage, the party aggrieved must bring it within the limited time, or he can only (*d*) recover *pro tanto*.

In suits by the crown for lands out of its possession

(*a*) *Lord Oakley* v. *Kensington Canal Company*, 5 B. & Ad. 138; *Hardy* v. *Ryle*, 9 B. & C. 603; *Boyd* v. *Croydon Railway Company*, 4 Bing. N. C. 669; 6 Dowl. 721.

(*b*) *Wedge* v. *Berkeley*, 1 N. & P. 665; 6 Ad. & El. 663; *Read* v. *Cowmeadow*, 7 C. & P. 821; 6 Ad. & El. 661.

(*c*) 2 Saund. 64 a, 63 c.

(*d*) *Massey* v. *Johnson*, 12 East, 67; *Weston* v. *Fournier*, 14 East, 490.

for twenty years, the defendant may (*e*) plead the general issue "not guilty," and give the special matter in evidence, and thus throw (*f*) the *onus* of proving title on the crown.

These statutes commonly enact that every special matter of defence may be given in evidence under the general issue; and by the express provisions of the act (*g*) for the amendment of the law, the new rules as to pleading (*h*) do not extend to penal actions; (*i*) and therefore in these cases the old plea of *nil debet* (*k*) will suffice, for any defence arising under any statute of limitation. (*l*) But by a recent rule of the courts, (*m*) the words "by statute" must be inserted in the margin of the statutable plea, and copied into the issue and nisi prius record.

In the following instances the limitations are as hereunder specified.

Six Calendar Months.

Charity commissioners. (*n*)

Justices of the peace, constables, headboroughs and officers, and persons acting in their aid. (*o*)

(*e*) 21 Jac. 1, c. 14; *Appendix*; 4 Inst. 116; 2 Dy. 238 b.

(*f*) *Att. Gen.* v. *Parsons*, 2 M. & W. 23.

(*g*) 21 Jac. 1, c. 4, ss. 4, 5; 3 & 4 Will. 4, c. 42, s. 1; *Appendix*.

(*h*) R. H. 4 Will. 4, (1); *Bastard* v. *Smith*, 1 N. & P. 242; *Anon.* Holt, 283.

(*i*) *Earl Spencer* v. *Swannel*, 3 M. & W. 154; 6 Dowl. 326.

(*k*) *Anon.* Noy, 71. If "in Case," see *Appendix*.

(*l*) *Calliford* v. *Blawford*, 1 Show. 330; 4 Mod. 129.

(*m*) R. T. 1 Vict.; 4 Bing. N. C. 816; 3 N. & P. 381; 4 M. & W. 3; 6 Dowl. 649.

(*n*) 5 & 6 Will. 4, c. 71, s. 21.

(*o*) 24 Geo. 2, c. 44, s. 8; *Jackson's* case, Lofft, 249.

Land tax. (*p*)
Municipal corporations. (*q*)
Taxes. (*r*)
Parkhurst prison. (*s*)

Six Months.

Marine mutiny. (*t*)
Mutiny. (*u*)
Ottoman dominions' consuls. (*x*)
Hungerford market company. (*y*)

Three Calendar Months.

Dean Forest mines. (*z*)
Houses of parliament site. (*a*)
Newspaper stamps. (*b*)
Poor laws amendment. (*c*)
Post office offences. (*d*)
Postage. (*e*)
Do. on newspapers. (*f*)

(*p*) 5 & 6 Will. 4, c. 20, s. 19.
(*q*) *Id.* c. 76, s. 133.
(*r*) 43 Geo. 3, c. 99, s. 70.
(*s*) Isle of Wight, for Juvenile Offenders, 1 & 2 Vict. c. 82, s. 16.
(*t*) 1 Vict. c. 18, s. 59.
(*u*) *Id.* c. 17, s. 75.
(*x*) 6 & 7 Will. 4, c. 78, s. 3.
(*y*) *Wilkes* v. *Hungerford Market Company*, 2 Bing. N. C. 284.
(*z*) 1 & 2 Vict. c. 43, s. 78.
(*a*) 1 Vict. c. 7, s. 36.
(*b*) 6 & 7 Will. 4, c. 76, s. 26.
(*c*) 4 & 5 Will. 4, c. 76, s. 104.
(*d*) 1 Vict. c. 36, s. 46.
(*e*) 5 & 6 Will. 4, c. 25, s. 30.
(*f*) 6 & 7 Will. 4, c. 54, s. 27.

Hackney carriages. (*g*)

Three Months.

Customs. (*h*) The time runs from the actual seizure (*i*) or boarding the vessel. (*k*)

Excise. (*h*) The act extends to officers and others acting in their aid. (*m*)

Two Calendar Months.

Merchant seamen. (*n*)

In ejectment the only plea is the general issue; and under it any defence arising upon any (*o*) of the statutes of limitation may be relied on. The lessor of the plaintiff in support of his case must make out a title within (*p*) the limitation; but it is sufficient if he makes out a title for twenty years, (*q*) if against a party not affected by any exceptions or disabilities.

2. In other cases the Statute of Limitations must be relied on by plea; and this is necessary, even though upon the face of the proceedings the action appears *primâ facie* to be out of time; (*r*) and the lapse of even

(*g*) 1 & 2 Vict. c. 79, s. 31.

(*h*) 28 Geo. 3, c. 37, s. 23.

(*i*) *Godin* v. *Ferris*, 2 H. Bla. 14; *Saunders* v. *Saunders*, 2 East, 254; *Parsons* v. *King*, 7 T. R. 6.

(*k*) *Crooke* v. *M'Tavish*, 1 Bing. 307; 8 J. B. Moore, 265.

(*m*) *Hendry* v. *Biers*, 2 D. & R. 9.

(*n*) 4 & 5 Will. 4, c. 52, s. 35.

(*o*) 2 Saund. 63 b, n. (*i*).

(*p*) *Stoker* v. *Berny*, 1 Lord Raym. 741.

(*q*) *Stokes* v. *Berry*, Holt, 264; 2 Salk. 421.

(*r*) *Hawkey* v. *Berwick* (in error), 1 Y. & J. 378; *Kirkman* v. *Siboni* (in error), 4 M. & W. 339.

twenty years from the time of making a contract to be performed *in futuro*, is not of itself evidence of a new contract averred to have been performed, and pleaded as an accord and satisfaction of the original contract. (*s*) The plea (*t*) of the Statute of Limitations is an issuable (*u*) plea, special, (*x*) and in confession and avoidance of a right of action (*y*) once vested; and therefore cannot refer to "the said supposed debt, if any such there be." (*z*) It must conclude with a verification, (*a*) and have counsel's signature thereto. (*b*) When it is pleaded jointly with any one or more of the following pleas, (*c*) *non assumpsit, nil debet,* never was indebted, tender as to part, bankruptcy of the defendant, his discharge under the Insolvent Act, *plene administravit, plene administravit præter,* infancy, or coverture; the masters will at once draw up a rule for the defendant to plead several matters (*d*). In other cases a judge's order for such a rule must be obtained. (*e*)

3. The replication when merely in denial concludes to the country, and does not (*f*) require counsel's hand;

(*s*) *Kirkman* v. *Siboni*, 4 M. & W. 339.
(*t*) *Merceron* v. *Merceron*, 5 Dowl. 271. Form of, see *Appendix*.
(*u*) *Drinkwater* v. *Claridge*, H. 27 Geo. 3, (C. P.)
(*x*) R. H. 4 Will. 4, *assumpsit*.
(*y*) *Hallett* v. *Birt*, 12 Mod. 121; Stephen on Pl. 185.
(*z*) *Margett* v. *Bays*, 4 Ad. & E. 489; 1 Har. & W. 685.
(*a*) 1 Saund. 283, 283 a; *Chandler* v. *Roberts*, 1 Doug. 58.
(*b*) *Macher* v. *Billing*, 3 Dowl. 246; R. E. 18 Car. 2.
(*c*) R. T. 1 Will. 4, (13); *Howen* v. *Carr*, 5 Dowl. 305.
(*d*) 4 Anne, c. 16, s. 4.
(*e*) R. T. 1 Will. 4, (13); *Hockley* v. *Sutton*, 2 Dowl. 700.
(*f*) R. H. 2 Will. 4, r. 107.

the writ of summons being now the commencement (*g*) of the action, the replication does not set out any process; except on a removal of an action from an inferior court, in which case it shows (*h*) the suit below commenced within the six years, and which is a valid answer (*i*) to the plea. Where the replication relies on some special matter (*k*) in answer, and therefore concludes with a verification, (*l*) it must have counsel's (*m*) hand thereto.

Where one or more (*n*) of a greater number of defendants is alone shown to have become liable, after the limitation expired, the plaintiff may take a verdict and the costs (*o*) against such defendant or defendants, as the case may be.

(*g*) 1 & 2 Vict. c. 110, s. 2.

(*h*) *Matthews* v. *Phillips*, 2 Salk. 424; 2 Show. 79, 126; 1 Lev. 143; 5 Mod. 426.

(*i*) *Spencer's* case, 6 Rep. 9; 2 Saund. 63 e; *Story* v. *Atkins*, 2 Ld. Raym. 1427; Salk. 424; Doct. pl. 170.

(*k*) *Ewer* v. *Jones*, 6 Mod. 26; *Cheveley* v. *Bond*, Holt, 427.

(*l*) *Bradburn* v. *Kennerdale*, 3 Mod. 318.

(*m*) Tidd's Pr. ch. 29; and see R. H. 2 Will. 4, (107).

(*n*) 9 Geo. 4, c. 14, s. 2, *Appendix*.

(*o*) Sect. 8.

CHAP. V.

IN PROCEEDINGS AT LAW.

1. *Computation of Time* . p. 42
2. *Articled Clerks* 43
3. *Attornies* 44
4. *Tender* 45
5. *Ejectment* ..... *ib.*
6. *Summons* 46
7. *Appearance* ..... *ib.*
8. *Declaring* 47
9. *Pleading* 49
10. *Evidence* 51
11. *Cognovit* 51
12. *Special Jury* ..... *ib.*
13. *Proceedings for Trial* .. 52
14. *Proceedings after Trial* . 53
15. *Bailable Process* 57
16. *Applications to the Court or a Judge* 61
17. *Error* 63
18. *Inferior Courts* 66
19. *Bankruptcy* 67

1. In legal proceedings a month means a lunar (*a*) month of twenty-eight days. Where any particular number of days not expressed to be clear days (*b*) is prescribed by the rules or practice of the Courts, they are reckoned exclusively of the first day and inclusively of the last, unless that happens on a Sunday, Christmas Day, Good Friday, or public fast, or thanksgiving day, in which case the time is to be exclusive of that day also. "Until" is inclusive of the day to which it is prefixed. (*c*) In computing the time of credit upon

(*a*) *Tullett* v. *Linfield*, 3 Burr. 1455.
(*b*) R. H. 2 Will. 4, (viii.).
(*c*) *Dakins* v. *Wagner*, 3 Dowl. 535; 2 Dowl. 674.

a mercantile contract, the day on which the contract was made is to be excluded from the reckoning. (*d*) The month required to elapse after the delivery of his bill before an attorney can commence an action must consist of twenty-eight days exclusively of both the day of delivering the bill and commencing the action. (*e*)

All rules, orders, and notices must be served before (*f*) nine o'clock at night.

Declarations in ejectment must be served before (*g*) the first day of the term, in order to compel an appearance in or as of that term.

And an affidavit in order to ground a writ of capias (*h*) must be made within one (*i*) year before applying for the order.

No declaration or other pleading (*k*) upon actions commenced (*l*) in the superior courts, can be delivered between the 10th day of August and the 24th day of October.

2. Within three months (*m*) from the date of articles of clerkship, an affidavit as to their execution, date, the names of the attorney, and clerk, and their places

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(*d*) *Webb* v. *Fairmaner*, 6 Dowl. 549; 3 M. & W. 473.

(*e*) *Blunt* v. *Heslop*, 3 N. & P. 554.

(*f*) R. H. 2 Will. 4, (50); R. E. T. 10 Geo. 2, (C. P.); *Edmunds* v. *Cates*, 4 M. & W. 66; 6 Dowl. 667.

(*g*) R. T. 1 Will. 4, (11); *Doe* v. *Roe*, 1 D. & R. 563.

(*h*) 1 & 2 Vict. c. 110, s. 3.

(*i*) *Doe* d. *Clarke* v. *Stilwell*, 3 N. & P. 701; 2 Jurist, 591.

(*k*) 2 Will. 4, c 39, s. 11.

(*l*) Sect. 19.

(*m*) 22 Geo. 2, c. 46, ss. 3, 5, 6; or by the annual Indemnity Act, before the time therein limited; *Ex parte Joy*, 3 Dowl. 342.

of abode must be filed in the office of the masters of the Court, and upon an assignment of them, a like affidavit must be so filed within three months afterwards.(*n*)

Within six months after the execution of the articles they and an affidavit as to their execution must be enrolled and filed. (*o*)

The articled clerk can only serve for one (*p*) year with the agent; and for the same period as a pupil with a practising barrister or certificated special pleader; but he cannot do so in this latter case, unless (*r*) he was bound for five years.

3. An attorney upon his admission must take out his certificate to practise within (*s*) the year, or he cannot practise (*t*) without a re-admission.

An application to strike him off the roll, either for a defect (*u*) in his service under articles, or even for a total (*v*) want of service, must be made within one year next after his admission, and in term time. (*x*)

(*n*) Sect. 9; *Richard Carter's* case, 2 W. Bla. 957.

(*o*) 34 Geo. 3, c. 14, s. 2; *Ex parte Pilgrim*, 1 B. & C. 264; 2 D. & R. 429; *Ex parte Clarke*, 3 B. & A. 610; *Ex parte Chapman*, 3 Dowl. 562; *Ex parte Beckendin*, 1 H. & W. 193.

(*p*) R. T. 31 Geo. 3; 2 Geo. 2, c. 23, s. 5; 22 Geo. 2, c. 46, s. 8; R. T. 31 Geo. 3, cited in 4 T. R. 379.

(*r*) 1 & 2 Geo. 4, c. 48, s. 2.

(*s*) 37 Geo. 3, c. 90, s. 26; *Slack* v. *Wilkins*, 1 C. & M. 23.

(*t*) *Id.* 31; *Wilton* v. *Chambers*, 2 N. & P. 392; 2 Jurist, 93; *Ex parte Nicholas*, 6 Taunt. 408.

(*u*) 1 Vict. c. 16, s. 8.

(*v*) *Re* ——, gent. one &c.; 2 B. & Ad. 766; 1 Bing. 160.

(*x*) *Ex parte Owen*, 1 Dowl. 511; *Rex* v. *Walsh*, 1 Jurist, 559.

The Courts will not re-admit (*y*) an attorney who has been off the roll for upwards of thirty years.

4. A tender must be made before the writ of summons is issued; (*z*) when it is applicable to the debt (*a*) admitted to be due; or of amends (*b*) by a justice, or in an action as to a distress for rent, (*c*) or as to involuntary trespasses by cattle, (*d*) or for matters arising upon a distress for poor-rate. (*e*)

5. The motion for judgment against the casual ejector must, in town causes, be made within (*f*) the term mentioned in the notice. In country cases it may be made during the next term. (*g*) Where the right of entry accrues in or after Hilary or Trinity terms (*h*) the landlord may within ten days serve a declaration in ejectment.

(*y*) *Ex parte Billings*, 5 Dowl. 395; 1 Chit. Rep. 558.

(*z*) *Briggs* v. *Calverley*, 8 T. R. 629; *Moffat* v. *Parsons*, 5 Taunt. 307; 1 Marsh. 55; *Wood* v. *Newton*, 1 Wils. 141.

(*a*) *Poole* v. *Crampton*, 5 Dowl. 468; 2 M. & W. 223.

(*b*) 24 Geo. 2, c. 44, s. 2; *Cashbourn* v. *Ball*, 2 W. Bla. 859.

(*c*) 11 Geo. 2, c. 19, s. 20; 1 Bro. Ent. 332.

(*d*) 21 Jac. 1, c. 16, s. 5, *Appendix*; *Basely* v. *Clarkson*, 3 Lev. 37; *Bailee* v. *Vivash*, 1 Stra. 549; *Allen* v. *Bayley*, *in notis*, Lutw. 1596; *Martin* v. *Kesterton*, 2 W. Bla. 1089.

(*e*) 17 Geo. 2, c. 38, s. 10.

(*f*) *Doe* d. *Davis* v. *Roe*, 6 Dowl. 461; 2 Jurist, 944.

(*g*) *Doe* v. *Roe*, 1 Dowl. 495; *Doe* v. *Roe*, 2 Tyr. 724; *Doe* v. *Roe*, 2 Dowl. 196; *Doe* v. *Roe*, 3 Ib. 575; *Doe* v. *Roe*, 1 Har. & W. 218; *Doe* v. *Roe*, 6 Dowl. 270; *Doe* v. *Roe*, 1 Gale, 15; *Doe* v. *Roe*, 5 Dowl. 662; *Doe* d. *Barth* v. *Roe*, 4 Bing. N. C. 675.

(*h*) 11 Geo. 4 and 1 Will. 4, c. 70, s. 36; *Doe* v. *Roe*, 1 Dowl. 547; *Doe* v. *Jessop*, 3 B. & Ad. 402.

A motion to plead "ancient demesne" must be made within (*i*) the first four days of the term in which the tenant in possession is called on to appear.

An affidavit of more than a year old cannot be used in moving for a rule, in a case in which the lapse of time affects the matters of the affidavit. (*k*)

6. A writ of summons (*l*) is in force only for four calendar months (*m*) from its date, including the day of its date.

The time limited for the defendant to pay the debt and costs indorsed on the writ, is four days (*n*) after service.

Upon a service of the process on the defendant the day of the week and month must be indorsed on the summons within three days (*o*) after the service.

An application to set aside the process for irregularity must be within the time for entering an appearance. (*p*)

7. Where a levy is effected under a writ of *distringas*, an appearance must be entered by the defendant within (*q*) eight days after its return; where *non est inventus* and *nulla bona* are returned he has the like time. (*r*)

(*i*) *Goodtitle* v. *Thrustout*, 2 Barnes, 187, 188.

(*k*) *Doe* d. *Clarke* v. *Stilwell*, 3 N. & P. 701; 2 Jurist, 591.

(*l*) 1 & 2 Vict. c. 110, ss. 1, 2.

(*m*) 2 Will. 4, c. 39, s. 10; *Richardson* v. *Daly*, 2 Jurist, 946.

(*n*) R. H. 2 Will. 4, (2); *Dowditch* v. *Slaney*, 4 Dowl. 140.

(*o*) R. M. 3 Will. 4, (3); *Brooke* v. *Edridge*, 2 Dowl. 647.

(*p*) *Child* v. *Marsh*, 3 M. & W. 433; 6 Dowl. 576.

(*q*) 2 Will. 4, c. 39, ss. 3, 16, Sched. No. 3; *Page* v. *Hemp*, 4 Dowl. 203.

(*r*) Sect. 8; *Copeland* v. *Nevill*, 5 N. & M. 172; 1 H. & W. 374;

If the defendant does not enter an appearance, the plaintiff has then a right to do so under the statute (*s*) and rule of Court; (*t*) and he may do so at any time while (*u*) the action is in Court.

Upon a service on the defendant he must enter an appearance within (*x*) eight days, and including the day of the service; unless it be Sunday, Christmas Day, or any other day appointed for a public fast or thanksgiving; (*y*) but if the last of such eight days happen between the Thursday before and the Wednesday after Easter day, then the latter day is to be considered as the last of such eight days.

Conusance of the plea (*z*) in the action, whether by the University of Oxford, (*a*) or of Cambridge, (*b*) or by the owner of a franchise, (*c*) must be demanded before declaration.

8. On a removal of a cause from an inferior Court,

Balgay v. *Gardner*, 2 Dowl. 52; *Scarborough* v. *Evans*, 2 Dowl. 9; *Cornish* v. *King*, Id. 18.

(*s*) 12 Geo. 1, c. 29, s. 1; *Dean* v. *Day*, 2 Jurist, 808.

(*t*) R. M. 3 Will. 4, (3).

(*u*) *Smith* v. *Painter*, 2 T. R. 719; *Davis* v. *Hughes*, 7 T. R. 206; *Bugden* v. *Burr*, 10 B. & C. 457; *Liddle* v. *Cranch*, 5 Dowl. 662; *Cook* v. *Allen*, 1 Dowl. 676.

(*x*) 2 Will. 4, c. 39, Sched. No. 1, s. 2; *Willett* v. *Wilson*, 2 C. & J. 356; *Strange* v. *Freeman*, 5 Dowl. 407.

(*y*) Sect. 11.

(*z*) 1 Roll. Abr. 489, 490; Bac. Abr. Pleas E. 1, Courts, D. 3.

(*a*) *Williams* v. *Brikenden*, 11 East, 543; *Thornton* v. *Ford*, 15 East, 634.

(*b*) *Brown* v. *Renouard*, 12 East, 12.

(*c*) Bac. Abr. Courts, D. 3; Hardres, 509.

as in replevin, the proper time for the defendant to obtain a rule for the the plaintiff to declare is within (*d*) four days after the end of the term in which the writ for the removal was returnable. In other cases the defendant may, after the end of the next entire term after the service of the summons, demand (*e*) in writing a declaration; and the plaintiff must, unless he obtains further (*f*) time to declare, do so within four days (*g*) after such demand; and at the end of such further time (*h*) if it is allowed; and even though there is not such a demand or time allowed, yet if he does not declare within one year next after the process was served, (*i*) the action is out of Court. (*k*)

An application by the defendant to have the declaration for a misnomer (*l*) amended at the expense of the plaintiff, must be made within the time limited for the defendant to plead in abatement.

An application to change the venue on the ordinary grounds (*m*) must be made before (*n*) plea, and before

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(*d*) R. H. 2 Will. 4, (37, 38).

(*e*) *Barnes* v. *Gearing*, 2 Mod. 217; Ca. Prac. 29.

(*f*) *Richardson* v. *Pollen*, 1 Hodges, 75.

(*g*) R. T. 1 Will. 4, (8); *Teulon* v. *Gant*, 5 Dowl. 153.

(*h*) *Towers* v. *Powell*, 1 H. Bl. 87; 2 T. R. 258, n.

(*i*) R. H. 2 Will. 4, (35); *Sykes* v. *Bauwens*, 2 N. R. 404; *Penny* v. *Harvey*, 3 T. R. 123; *Sherson* v. *Hughes*, 5 T. R. 35; *West* v. *Radford*, 3 Burr. 1452; *Orley* v. *Lee*, 2 T. R. 112.

(*k*) *Cooper* v. *Nias*, 3 B. & A. 271.

(*l*) 3 & 4 Will. 4, c. 42, s. 11; *Hinton* v. *Stevens*, 1 H. & W. 521; *Moody* v. *Aslett*, 3 Dowl. 486.

(*m*) R. H. 2 Will. 4, (103); R. T. 49 Geo. 3, K. B.

(*n*) *Herbert* v. *Flower*, Barnes, 492; *Talmash* v. *Penner*, 3 B. & P. 12; *Smith* v. *Walker*, 2 Moore, 64; *Wigley* v. *Dubbins*, 4 Bing. 18.

obtaining an order for time to plead, on the terms of taking short notice of trial. (*n*)

9. The time for pleading in abatement, (*o*) or for pleading by an attorney in Q. B., (*p*) is four days only. In other cases, where the venue is in London or Middlesex, and the defendant resides within (*q*) twenty miles from London, it is four days. But if he resides beyond, (*r*) or the venue is elsewhere, there are eight days. Where the defendant pleads payment of money into court, (*s*) and the plaintiff accepts it in satisfaction (*t*) and discharge of the demand, in respect of which it was paid in; the costs must be paid within forty-eight hours after they are taxed, or the plaintiff may sign final judgment. If the defendant set out in his plea a deed with a *Profert*, and the plaintiff craves *oyer* of it; it must be given within (*u*) two days, or judgment may be signed as for want of a plea.

On a demurrer, if a joinder is demanded, the opposite party must (*x*) within four days join in demurrer,

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(*n*) *Shipley* v. *Cooper*, 7 T. R. 698; *Quin* v. *Taylor*, 1 Bing. 186; *Tonks* v. *Fisher*, 2 Dowl. 22; *Haythorn* v. *Bush*, Id. 240.

(*o*) *Ryland* v. *Wormald*, 5 Dowl. 581; 2 M. & W. 393; *Lee* v. *Carlton*, 3 T. R. 642; R. H. 2 Will. 4, [VIII.]

(*p*) *Lowder* v. *Lander*, 5 Dowl. 684; *Brenton* v. *Lawrence*, Id. 566; *Mann* v. *Fletcher*, 5 T. R. 369.

(*q*) R. H. 11 Geo. 2, r. 3.

(*r*) R. M. 10 Geo. 2, 1736; T. 22 Geo. 3, 1782; 1 M. & S. 566.

(*s*) R. Trin. 1 Vict. (1.)

(*t*) S. (2); *Emmett* v. *Standen*, 6 Dowl. 591; 3 M. & W. 497.

(*u*) *Page* v. *Divine*, 2 T. R. 40; Barnes, 245.

(*x*) R. H. 4 Will. 4, (3); *Vernon* v. *Hudgins*, 4 Dowl. 665.

or judgment may be signed. Four clear (*y*) days before the day appointed for the argument, (*z*) the plaintiff must deliver two copies of the demurrer books to the chief and senior *puisnè* judge, and the defendant must do the like to the two junior *puisnè* judges; or in default, the opposite party may on the next (*a*) day deliver them.

On a discontinuance by the plaintiff after plea (*b*) in bar pleaded, he must, to prevent a *non pros*, pay the costs within four days after taxation. (*c*) An application to bring back the venue should in a common case be made before replication. (*d*)

On a rule to reply, (*e*) the plaintiff must do so in four days, (*f*) and the same rule holds as to a rule to rejoin, (*g*) unless the defendant is under terms to "rejoin *gratis*," in which case he must do so within (*h*) twenty-four hours after demand.

Where a matter of defence arises after the commencement of the action, it may be so (*i*) pleaded: the

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(*y*) *Rex* v. *Justices of Herefordshire*, 3 B. & A. 581; *Zouch* v. *Empsey*, 4 B. & A. 522.

(*z*) R. H. 4 Will. 4, (7); *Darker* v. *Darker*, 2 Dowl. 88.

(*a*) *Fisher* v. *Snow*, 3 Dowl. 27; *Sandall* v. *Bennett*, 4 N. & M. 89.

(*b*) *Cooper* v. *Holloway*, 1 Hodges, 76.

(*c*) R. H. 2 Will. 4, (106.)

(*d*) *Dickinson* v. *Fisher*, 2 Stra. 858.

(*e*) R. H. 2 Will. 4, (53, 54); *Seaton* v. *Shey*, 3 Dowl. 537; *Pound* v. *Lewis*, 2 Dowl. 744; 2 M. & Scott, 210.

(*f*) *Driver* v. *Blackway*, M. 1829, MS.

(*g*) Sellon's Practice, vol. i. p. 368.

(*h*) *Clark* v. *Adams*, 2 Tyr. 755; *Jones* v. *Key*, 2 Dowl. 265.

(*i*) *Lovell* v. *Eastaff*, 3 T. R. 554; *Alder* v. *Park*, 5 Dowl. 16; 2 Har. & W. 78; 7 C. & P. 537.

form is, that it arose *after* (*k*) the last pleading, or the issuing of the jury process, as the case may be; and it must, when after a plea, be accompanied by an affidavit that the matter of defence arose within eight days next before.

10. If a party to the action is required to make admission as to the evidence at the trial of documents, he must do so (*l*) within forty-eight hours, or he is liable to be summoned before a judge for the purpose of compelling such admission.

11. Where a *cognovit actionem* is given by a defendant; in order to affect assignees in case of bankruptcy, (*m*) or a petition for a discharge, (*n*) a true copy of it (*o*) and an affidavit of the time of execution must within twenty-one days be filed with the masters. The same rule applies as to warrants of attorney. (*m*)

12. In replevin (*p*) a rule for a special jury (*q*) must be obtained six days before the day to which the notice of trial refers.

In London (*r*) and Middlesex the rule for a special jury must be served, and the cause entered as such in the marshal's book before the adjournment day.

(*k*) R. H. 4 Will. 4, (20); 1 Dowl. 457.

(*l*) S. 20; 1 Hodg. 96; 3 Dowl. 810.

(*m*) *Hurst* v. *Jennings*, 5 B. & C. 650; 8 D. & R. 424; *Green* v. *Gray*, 1 Dowl. 350.

(*n*) 3 Geo. 4, c. 39, s. 3; 1 Will. 4, c. 7, s. 7.

(*o*) 1 & 2 Vict. c. 110, s. 60.

(*p*) R. H. 1838.

(*q*) 6 Geo. 4, c. 50, s. 30.

(*r*) R. H. 44 Geo. 3, K. B.; R. T. 52 Geo. 3, C. P.

The special jurors must, in country causes, be summoned three days (*s*) before that appointed for the trial.

13. Where by the judge's order the writ of trial is to be directed to the judge of the sheriff's court of London, the writ must be left at the office in Whitecross-street four days (*t*) before the day appointed for trial.

In a town cause where issue is joined *in* Michaelmas term, though notice of trial is not given, yet judgment as in case of a nonsuit may be moved for in the following Easter term (*u*). In a country cause (*x*) where issue is joined within a term, the defendant may, after another term and an assizes pass, move for judgment as in case of a nonsuit, but where issue is joined after a non-issuable term, the motion cannot be made until the next non-issuable term. (*y*)

In a town cause where the defendant lives within forty miles from London, (*z*) notice of countermand of trial and inquiry (*a*) and of continuance (*b*) of notice of trial or inquiry (*c*) must be given two days exclu-

(*s*) 6 Geo. 4, c. 50, s. 25.

(*t*) General notice [1839]. By the judge.

(*u*) *Pierson* v. *Chessum*, 6 Dowl. 507.

(*x*) *Evans* v. *Barnard*, 3 M. & W. 276; 6 Dowl. 367; *Robinson* v. *Taylor*, 5 Dowl. 513; *Apperley* v. *Morse*, 6 Dowl. 505.

(*y*) *Harrison* v. *Williams*, 6 Dowl. 772.

(*z*) *Butler* v. *Johnson*, Barnes, 301.

(*a*) R. H. 2 Will. 4, (62); *King* v. *Jones*, 1 Dowl. 640.

(*b*) *Price* v. *Bainbridge*, Barnes, 297; *Whitlock* v. *Humphreys*, 2 Stra. 849, 1073; *Cas. tem.* Hardw. 369.

(*c*) *Stewart* v. *Abraham*, 2 Dowl. 709; *Wardle* v. *Acland*, Id. 28.

sive before the day (*d*) of trial or inquiry contained in the original notice, and the same rules operate as to a writ of trial. (*e*)

Where the plaintiff enters in an action of tort a *nolle prosequi* against one or more of a larger number of defendants, he must do so before (*f*) entering his cause for trial, or if after an interlocutory judgment by default, then before final judgment. (*g*)

The entry of a cause for trial is thus limited in town causes: for a sittings in term, (*h*) two days before; after term, (*i*) in Middlesex, on or before the first day of the sittings, and for the adjournment day (*k*) in London, two days before it; in country causes, before twelve o'clock on the day after (*l*) the commission is opened, except at York and Liverpool, for there the causes in the second list may be entered before twelve o'clock (*m*) on the second sitting day.

14. A motion for a new trial, to set aside a nonsuit and enter a verdict, for a repleader, a *venire de novo*, or judgment *non obstante veredicto*, (*n*) must, if the trial

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(*d*) *Cooper* v. *Whitmarsh*, 4 M. & W. 73; 6 Ad. & E. 803.

(*e*) *Dignam* v. *Mostyn*, 6 Dowl. 547; *Same* v. *Ibbotson*, 3 M. & W. 431; 3 Dowl. 607; 1 Har. & W. 217.

(*f*) *Dale* v. *Eyre*, 1 Wils. 306; *Greeves* v. *Rolls*, 2 Salk. 457.

(*g*) *Laver* v. *Salkeld*, 2 Salk. 455.

(*h*) R. H. 15 & 16 Car. 2, r. 2, K. B.; E. 1 Geo. 2, C. P.

(*i*) R. H. 34 Geo. 3, r. 2, K. B.; R. H. 8 Geo. 1, C. P.

(*k*) *Ante*, 51, and R. H. 32 Geo. 3, C. P.

(*l*) R. H. 14 Geo. 2, K. B. and C. P.; R. H. 32 Geo. 3.

(*m*) R., Aug. Assizes, 3 Geo. 4; Wareing's Pr. 170; 2 M. & Rob. 126.

(*n*) *Weston* v. *Foster*, 2 Hodges, 63.

took place in the term, and the jury process (*n*) or writ of trial (*o*) was then returnable, be made within four days after such return, and, at all events, during the term. If it was returnable in vacation, (*p*) the motion may be made within the first four juridical days of the next term. (*q*)

A motion for a new trial must be made before (*r*) moving to arrest the judgment; but a *venire de novo* may be moved for afterwards. (*s*)

An application to set aside an award when under the statute 9 & 10 Will. 3, c. 15, (*t*) as where a verdict is not taken and where the matter of the application was not part of the action, must (*u*) be made during the entire term next after the time of its being published (*x*) between the parties. Where the cause only is referred, the arbitrator is put in the place of the jury, and the motion must be within (*y*) the four first days

(*n*) R. T. 5 Geo. 4, B. R.; R. H. 2 Will. 4, (65); *Kirkham* v. *Marter*, 2 B. & A. 613; 1 C. & J. 411; *Mason* v. *Clarke*, 1 Dowl. 288; *Brook* v. *Finch*, 6 Dowl. 313.

(*o*) 3 & 4 Will. 4, c. 42, s. 17.

(*p*) *Thomas* v. *Jones*, 6 Dowl. 663; 4 M. & W. 28.

(*q*) *Weston* v. *Foster*, 2 Bing N. C. 701; 5 Dowl. 54.

(*r*) *Philpot* v. *Page*, 4 B. & C. 160; 6 D. & R. 281.

(*s*) *Corner* v. *Shew*, 6 Dowl. 688; 4 M. & W. 163.

(*t*) Sect. 1; *Rushworth* v. *Barron*, 3 Dowl. 317; 1 H. & W. 122; *M'Arthur* v. *Campbell*, 2 N. & M. 444; *Potter* v. *Newman*, 4 Dowl. 504; *Worrall* v. *Deane*, 2 Dowl. 261.

(*u*) *Reynolds* v. *Askew*, 5 Dowl. 682.

(*x*) *Musselbrook* v. *Dunkin*, 1 Dowl. 722; *Emet* v. *Ogden*, 7 Bing. 258; *Kennard* v. *Harris*, 2 B. & C. 801; 4 D. & R. 272; *In re Smith* v. *Blake*, 2 Jurist, 1015, B. C., sect. 2.

(*y*) *Hayward* v. *Phillips*, 1 N. & P. 288; 6 Ad. & El. 119; *Salter* v. *Yates*, 2 M. & W. 67; *Rawsthorn* v. *Arnold*, 6 B. & C. 629; 9 D. & R. 556; *Barrowdale* v. *Hitchener*, 3 B. & P. 244.

of the next term, as on a motion for a new trial; but not if the objection applies to matters in difference not (*z*) affected by the verdict; the motion for this purpose cannot, unless it refers to a verdict, be made upon the last day of any term.

The certificate of the judge under 22 & 23 Car. 2, c. 9, s. 136, that an assault and battery was proved, or that the freehold or title of the plaintiff's land came in question, and in order to give full costs where the damages are under 40*s.*, (*a*) must be obtained before final judgment; and so also, that the trespass was wilful and malicious under 8 & 9 Will. 3, c. 11, s. 4, (*b*) or a suggestion under the Court of Requests' Act as to costs, (*c*) or in the last case, at the latest, within the four first juridical days (*d*) of the next term.

A certificate by the judge as to double or treble costs (*e*) must be made before taxation.

Where either the plaintiff or the defendant dies after verdict, (*f*) i. e. on or after the first (*g*) day of the sit-

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(*z*) *Allenby* v. *Proudlock*, 4 Dowl. 54; *Manser* v. *Heaver*, 3 B. & Ad. 295; *Moore* v. *Butlin*, 2 N. & P. 436.

(*a*) *Johnson* v. *Stanton*, 2 B. & C. 621; 4 D. & R. 156.

(*b*) *Woolley* v. *Whitby*, 2 B. & C. 580; 4 D. & R. 147.

(*c*) *Watchorn* v. *Cook*, 2 M. & S. 348; *Calvert* v. *Everard*, 5 M. & S. 510; *Unwin* v. *King*, 2 Dowl. 593; *Godson* v. *Lloyd*, 4 Dowl. 157; 1 Gale, 244.

(*d*) *Baddley* v. *Oliver*, 1 Dowl. 598; *King* v. *Erle*, 5 Dowl. 595.

(*e*) *Grindley* v. *Holloway*, 1 Doug. 307; *Harper* v. *Carr*, 7 T. R. 448; 6 T. R. 12.

(*f*) 2 Tidd's Practice, vol. 2, p. 966.

(*g*) *Jacobs* v. *Miniconi*, 7 T. R. 31; *Taylor* v. *Harris*, 3 B. & P. 549; *Johnson* v. *Hamilton*, 4 Dowl. 762; *Johnson* v. *Budge*, 3 Dowl. 207; *Palmer* v. *Cohen*, 2 B. & Ad. 966.

tings, or the commission day of the assizes in which the trial is had, judgment must be entered within (*h*) two terms.

A motion for costs of the day on account of the plaintiff not proceeding to trial upon his notice; or as to the defendant where he proceeds by proviso, must be made while (*i*) the action is in existence, i.e. before the debt and damages and costs, or damages and costs, or costs, as the case may be, are paid.

A motion to the courts of law at Westminster for leave to issue execution against a former member of a trading association constituted under 4 & 5 Will. 4, c. 94, must be made within three years (*k*) next after the time when the party in question ceased to be a member of it.

A warrant of attorney (*l*) only authorises judgment on it in the lifetime of the debtor; (*m*) where it is more than one year old, (*n*) and less than ten years, leave to enter up judgment upon it must be obtained in term time by a motion of course, and in vacation by a judge's order. If ten years old or more, there must be a rule to show cause. If leave is refused, the warrant stands as an admission by simple contract only, and is subject to the same (*o*) limitation. Where the plaintiff upon a final

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(*h*) 17 Car. 2, c. 8, s. 1; *Anon.* Holt, 400; *Copley* v. *Day*, 4 Taunt. 702; 1 Wils. 302; 10 B. & C. 480.

(*i*) *Redit* v. *Lucock*. 2 Dowl. 247.

(*k*) Sect. 3.

(*l*) 1 & 2 Vict. c. 110, s. 9.

(*m*) *Chauncey* v. *Needham*, Andr. 55; 4 N. & M. 235.

(*n*) R. H. 2 Will. 4, (73).

(*o*) *Clark* v. *Figes*, 2 Stark. 234; *ante*, p. 26.

judgment (*p*) does not within a year sue out (*q*) a writ of execution upon it, and get it returned (*r*) into the office of the Court; he must proceed by a scire facias, and obtain therein an award of execution, and which is a continuance of the action. (*s*) Where the judgment is more than ten years old (*t*) the writ is obtained in vacation by a judge's order, and in term time by a motion of course. If it is fifteen years old or more, there must be a rule to show cause.

A writ of attachment, which is now only necessary (*u*) when not for money or costs, must not have between the *teste* and the return even one intervening term; after the lapse of four terms, if there has not been any proceeding, the Court must, on an affidavit of this, be applied to for a rule (*x*) that a writ may issue *de novo*.

15. The sheriff must be ruled, or there must be (*y*) an order for him to return a writ within six months (*z* after he goes out of office.

Where a writ of capias (*a*) is issued, it is in force for one calendar month, and the arrest must be before

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(*p*) *Sympson* v. *Gray*, Barnes, 197; 1 Stra. 100.

(*q*) Stat. West. 2, 13 Edw. 1, stat. 1, ç. 45; 2 Dowl. 615.

(*r*) *Garlick* v. *Sangster*, 9 Bing. 48; *Blayer* v. *Baldwin*, 2 Wils. 82; *Aires* v. *Hardress*, 1 Stra. 100.

(*s*) *Follett* v. *Trill*, Barnes, 96.

(*t*) R. H. 2 Will. 4, s. 79.

(*u*) 1 & 2 Vict. c. 110, ss. 18, 20.

(*x*) Gude (C. O.) Practice, vol. i. p. 251.

(*y*) 20 Geo. 2, c. 37, s. 2; *Yaroth* v. *Hopkins*, 1 Gale, 141; 3 Dowl. 711.

(*z*) *Rex* v. *Adderley*, 2 Doug. 463.

(*a*) 1 & 2 Vict. c. 110, s. 3.

final judgment. (*b*) The sheriff must within (*c*) six days after the arrest indorse on the capias the true day of its execution, (*d*) and if called on by a side bar rule or a judge's order to return it, he should do so at the expiration of the time limited, and as soon as the office opens. (*e*) In London and Middlesex the time is four days, and in other counties eight days. (*f*)

The time limited for putting in special bail is eight days, (*g*) and in country causes the bail-piece must also be transmitted and filed within (*h*) that time. If the notice is the four days notice of putting in and justifying at the same time, (*i*) the plaintiff, in order to compel an actual justification, must give one day's previous notice of exception. But in other cases he has twenty (*k*) days for exception, in which case there must be a justification within four days, (*l*) and notice

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(*b*) 1 & 2 Vict. c. 110, s. 5.

(*c*) R. Mich. 3 Will. 4, (4); *Loveridge* v. *Plaistow*, 2 H. Bla. 29; *Perrot* v. *Sheriff of Kent*, 2 Esp. 285.

(*d*) R. M. 3 Will. 4, (4).

(*e*) R. T. 6 Geo. 3, (K. B.)

(*f*) R. M. 7. Will. 4.

(*g*) 1 & 2 Vict. c. 110, sched. "Warning"; *Hillary* v. *Rowles*, 2 Dowl. 201; *Fuller* v. *Prest*, 7 T. R. 109.

(*h*) *Craig* v. *Evans*, 5 Dowl. 664; *Grant* v. *Gibbs*, 3 Dowl. 409; 1 Hodges, 56.

(*i*) R. T. 1 Will. 4, (1); *Jenkins* v. *Maltby*, 2 C. & J. 124.

(*k*) R. M. 8 Anne; Q. B. R. H. 2 Will. 4, (25); *Rex* v. *Sheriff of Middlesex*, 7 D. & R. 264; *Same* v. *Same*, 8 T. R. 258.

(*l*) R. E. 5 Geo. 2, K. B.; R. T. 3 & 4 Geo. 2, C. P.; Dax, 82; *Bond* v. *Evans*, 4 B. & C. 864; 7 D. & R. 374; *St. Hanlare* v. *Byham*, 4 B. & C. 970; 7 D. & R. 458.

thereof served two days previously, (*m*) except in the Queen's Bench, and there one day (*n*) will suffice, and it must be served before (*o*) eleven o'clock in the forenoon of the day; and in case of further (*p*) time being allowed, the notice must be served before three o'clock in the afternoon of the same day.

If the defendant on his arrest has paid the debt indorsed on the *capias*, and 10*l.* to answer the costs, into the sheriff's hands, (*q*) he may at any time before the eight days for putting in special bail have expired, put them in and have the deposit out of Court, or he may pay in 10*l.* additional (*r*) and in lieu of special bail; and he may, on perfecting (*s*) special bail, before issue joined in fact or in law, take the money out of Court.

On an arrest and going to prison, or render before declaration, the plaintiff must declare (*t*) before the end of the next entire term after the time of the arrest, or the defendant will be entitled to a discharge on entering a common appearance. The defendant is enti-

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(*m*) *Nation* v. *Barrett*, 2 B. & P. 30; Dax, 82; R. H. 2 Will. 4, (16).

(*n*) *Wilson* v. *Hawkins*, 5 Dowl. 436.

(*o*) R. T. 59 Geo. 3, K. B. and Exch.; R. M. 60 Geo. 3, C. P.

(*p*) *Newton's bail*, 1 Gale, 171; 4 Dowl. 270.

(*q*) 43 Geo. 3, c. 46, s. 2; *Chadwick* v. *Battye*, 3 M. & S. 283; *Hill* v. *Ching*, 1 Bing. 103.

(*r*) 7 & 8 Geo. 4, c. 71, s. 2; *Rowe* v. *Softly*, 6 Bing. 634; *Straford* v. *Love*, 3 Dowl. 593; 1 H. & W. 195; *Morgan* v. *Pedler*, 4 Dowl. 645; *Stratford* v. *M'Can*, 1 Gale, 344; *Smith* v. *Jordan*, 2 M. & P. 428.

(*s*) 7 & 8 Geo. 4, c. 71, s. 3; *Hanwell* v. *Mure*, 2 Dowl. 165; *Ferrall* v. *Alexander*, 1 Dowl. 132; *Bull* v. *Turner*, 4 Dowl. 734.

(*t*) R. T. 3 Will. 4, r. 1; R. H. 2 Will. 4, (36).

tled to a supersedeas if the plaintiff does not proceed to trial (*u*) or final judgment within three terms inclusive after declaration, and he must be charged in execution (*x*) within two terms, (*y*) inclusive of that in which (*z*) the trial was had or judgment entered. The vacation in which (*a*) the render is made is viewed as parcel of the last term.

If by (*b*) reason of a writ of error, special order of the Court, or agreement of the parties, and which must state (*c*) that proceedings are stayed at the defendant's request, or other special matter (*d*), as if he petitions (*e*) the Insolvent Court for his discharge, but not if he stays proceedings by order of the Court of Chancery; (*f*) the prisoner being in the Queen's Bench or Fleet Prisons is not entitled to be superseded; notice in writing must be given to the marshal or warden forthwith, and who must immediately enter the same in the books of the prison. In matters of irregularity

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(*u*) R. H. 2 Will. 4. (85).

(*x*) *Stocken* v. *Wedderburn*, 4 Scott, 570; *Whitmore* v. *Burns*, 4 Scott, 571; *Foulkes* v. *Burgess*, 6 Dowl. 109.

(*y*) *Colbron* v. *Hall*, 5 Dowl. 534.

(*z*) *Thorne* v. *Leslie*, *Bart.*, 3 N. & P. 305.

(*a*) T. 26 & 27 Geo. 2, (Exch.); *Borer* v. *Baker*, 2 Dowl. 608; 1 Ad. & Ell. 860; *Baxter* v. *Bailey*, 3 M. & W. 415; 6 Dowl. 559; *Thorne* v. *Leslie*, 3 N. & P. 305.

(*b*) R. H. 2 Will. 4, (87).

(*c*) *Siggers* v. *Brett*, 5 B. & Ad. 455.

(*d*) *Melton* v. *Hewitt*, 2 Dowl. 71.

(*e*) *Molyneux* v. *Brown*, 2 Dowl. 84; 1 & 2 Vict. c. 110, s. 41.

(*f*) *Lewis* v. *Gompertz*, 6 Dowl. 124.

the Courts require even a prisoner to come *promptly*; (*g*) they do not admit to its full extent the principle so forcibly expressed by Louis XVI.: "A prisoner can give no orders and make no concessions;" but they allow a reasonable latitude, and a prisoner once supersedable is always so.

Where the bail are returned by the sheriff as summoned (*h*) upon the *scire facias*, they must render their principal on the return day. In other cases (*i*) the bail have eight days after the return (*k*) of the *scire facias* to render the principal.

In an action of debt on the recognizance of bail, the bail can render the principal *within* fourteen days (*l*) after a copy of the writ of summons is served, and any time before (*m*) the prison doors are closed for the night, and notice thereof to the plaintiff's attorney, and the costs (*n*) of the writ and of the service being paid, proceedings against the bail are stayed; and in order to stay proceedings against the bail during a writ of error by the principal, they must apply before (*o*) the time for rendering is expired.

16. In an application by a defendant under the in-

(*g*) *Fowell* v. *Petre*, 5 Ad. & El. 818; *Esdaile* v. *Davies*, 6 Dowl. 465.

(*h*) *Vanderesh* v. *Waylet*, Ca. Prac. 53.

(*i*) *Saunderson* v. *Brown*, 2 N. & P. 84; 6 Dowl 9.

(*k*) R. H. 2 Will. 4, (81).

(*l*) R. T. 3 & 4 Will. 4, (2).

(*m*) R. H. 2 Will. 4, (22).

(*n*) *Horn* v. *Whitcombe*, 5 Dowl. 328.

(*o*) R. H. 2 Will. 4, (22).

terpleader act, (*p*) he must do so after declaration and before (*q*) plea; and the sheriff must always apply (*r*) within a reasonable time (*s*), and though in vacation. (*t*)

An application to set aside process or proceedings for irregularity must be made within a reasonable time, (*u*) and before (*x*) the applicant has, after knowledge of it, taken a fresh step. In the case of a writ of summons, (*y*) it must be before the time for appearance has expired; and of an arrest, (*z*) it should be within the eight days. But obtaining particulars of demand does not operate as a waiver. (*a*)

On irregularities (*b*) in the declaration or notice thereof, the application respecting them must, if it be vacation, (*c*) be made to a judge, and in four days, (*d*) unless Sunday is the last, and then on the fifth day; and the party dissatisfied with his order may apply within (*e*)

(*p*) 1 & 2 Will. 4, c. 58.

(*q*) Sect. 1.

(*r*) Sect. 6.

(*s*) *Barker* v. *Phipson*, 1 H. & W. 191; 3 Dowl. 590.

(*t*) 1 & 2 Vict. c. 45, s. 2.

(*u*) *Spencer* v. *Newton*, 1 N. & P. 818; *Smith* v. *Webb*, 2 M. & W. 879. As to a "nullity" see 6 Dowl. 508.

(*x*) R. H. 2 Will. 4, (33).

(*y*) *Tyler* v. *Green*, 3 Dowl. 439; *Edwards* v. *Collins*, 5 Dowl. 227; *Child* v. *Marsh*, 6 Dowl. 576.

(*z*) *Daley* v. *D'Arcy Mahon*, 6 Dowl. 192; *Tyler* v. *Green*, 3 Dowl. 439; *Edwards* v. *Collins*, 5 Dowl. 227.

(*a*) *Hodgson* v. *Howell*, 3 M. & W. 284.

(*b*) *Woodcock* v. *Kilby*, 4 Dowl. 730; *Herbert* v. *Darley*, id. 726.

(*c*) *Hinton* v. *Stevens*, 1 H. & W. 521.

(*d*) *Newnham* v. *Hanny*, 5 Dowl. 259.

(*e*) *Woodcock* v. *Kilby*, 1 Gale, 405; 4 Dowl. 730.

the first four juridical days in the next term to the Court to set it aside.

Where a rule to set aside proceedings is discharged, the party obtaining it has the whole of that day (*f*) to take another step in the cause.

The general rule in cases of irregularity is, that the applicant must come *promptly*. (*g*)

17. Bail in error, to an higher court, (*h*) must, in order that it may be a *supersedeas* of execution, be put in within four days (*i*) after the final judgment is signed; or if allowed afterwards, then within four days (*k*) next after such allowance.

Where a bill of exceptions is tendered at the trial for misdirection, (*l*) the seal of the judge should be obtained to it before suing out of the writ of error. A writ of error to reverse a judgment can only be brought within twenty years (*m*) next after it was given. (*n*) If at this time the party bringing the writ was under the age of twenty-one years, a *feme covert*, in prison or beyond seas, he may bring the writ within five years (*o*)

(*f*) *Vernon* v. *Hodgins*, 4 Dowl. 654; 1 Gale, 384.

(*g*) *Rutledge* v. *Giles*, 2 Tyr. 169.

(*h*) 3 Jac. 1, c. 8; 6 Geo. 4, c. 96, s. 1.

(*i*) R. E. 16 Car. 2, and E. 36 Car. 2, K. B.; R. M. 28 Car. 2, C. P.; *Gravall* v. *Stimpson*, 1 B. & P. 478.

(*k*) 2 Saund. 101 h; *Bennett* v. *Nicholls*, 4 T. R. 121; *Jaques* v. *Nixon*, 1 T. R. 279; *Blackburn* v. *Kymer*, 5 Taunt. 672.

(*l*) *Taylor* v. *Willans*, 2 B. & Ad. 846; *Dillon* v. *Parker*, 1 Bing. 17; *Williams* v. *Taylor*, 6 Bing. 512.

(*m*) 10 & 11 Will. 3, c. 14, s. 1.

(*n*) *Jaques* v. *Nixon*, 1 T. R. 279; R. H. 4 Will. 4, (3).

(*o*) 10 & 11 Will. 3, c. 14, s. 2.

next after the removal of such disability, or his first return from beyond seas. In all these cases the limitation must be pleaded to the assignment of errors, as the Court will not interfere on summary application, (*p*) though twenty-nine years have elapsed; for that would be to deprive the other party of the benefit of the statutable exceptions and disabilities; but, as in other cases, the statute having began to run, is not affected by a subsequent disability. (*q*)

The plaintiff in error must within twenty days (*r*) after the allowance of the writ of error get the transcript prepared and examined with the clerk of the errors, in the Court in which judgment was given, or else a *non pros* may be signed.

On error to a superior Court, the plaintiff in error must within eight days (*s*) after the writ and transcript annexed have been delivered to the clerk of the errors, assign errors, or a *non pros* may be entered.

Upon a demand (*t*) of joinder or of a plea to the assignment of errors, the defendant must, within twenty days afterwards, deliver a joinder, plea, or demurrer.

But in none of these cases (*u*) is the time between the 10th of August and the 24th of October to be reckoned.

(*p*) *Higgs* v. *Evans*, 2 Stra. 837; Rep. temp. Hardw. 345.

(*q*) *Lloyd* v. *Vaughan*, 2 Stra, 1257; 1 Lev. 31.

(*r*) R. H. 4 W. 4, (10); *Pitt* v. *Williams*, 4 Dowl. 70; 1 H. & W. 363; *Dow* v. *Clark*, 2 Dowl. 302; *Salter* v. *Slade*, 3 N. & M. 717.

(*s*) Sect. 11. On error *coram nobis* or *vobis* it is twenty days after allowance.

(*t*) R. H. 4 Will. 4, (13).

(*u*) Id.

Four clear days (*v*) before the day appointed for the argument, the plaintiff in error must deliver copies (*x*) of the judgment below and of the assignment of errors, and pleadings thereon, to the judges of the Queen's Bench, upon writs of error from the Common Pleas or Exchequer, (*y*) or on writs of error from the Queen's Bench to the judges of the Common Pleas; and the defendant in error must deliver copies to the other judges of the Exchequer Chamber; or in default (*z*) the other party may deliver additional copies, and require a deposit or payment for them before the party making default is heard.

On a plea to a writ of error that it is not brought within time, the form of the prayer of judgment is, that "*the plaintiff in error be barred of his suit.*" (*a*)

In the House of Lords the plaintiff in error must assign errors within eight days (*b*) next after the bringing in of the writ and the record there, or the House will award, "that he lose his writ, that the defendant in error go without day, and that the record be remitted."

If the plaintiff in error sues out a *certiorari* it must be before *in nullo est erratum* pleaded; and he must prosecute *this* writ, and procure it to be returned within ten days next after the plea of diminution is put

(*v*) *Best* v. *Prior*, 2 Dowl. 189; *Darker* v. *Darker*, 2 Dowl. 88.
(*x*) R. H. 4 Will. 4, (15).
(*y*) 11 Geo. 4 and 1 Will. 4, c. 70, s. 8; 1 Dowl. Stat. 373.
(*z*) *Best* v. *Prior*, 2 Dowl. 189.
(*a*) *Street* v. *Hopkinson*, 2 Stra. 1055; Rep. *temp.* Hardw. 345.
(*b*) Standing Orders, No. 54, 13th Dec, 1661.

in, or else the defendant in error may proceed as if no such writ of *certiorari* had been awarded.

Where the writ of error is brought into the House during the sessions, (*c*) the plaintiff and the defendant in error must deliver in their printed cases within a fortnight after the time limited by the House for the plaintiff in error to assign errors.

18. In the Palace Court (*d*) the commencement of the suit is not by the writ (*e*) but the plaint; (*f*) and in the Petty Bag Office, it is by the writ of attachment of privilege. (*g*)

The levying of the plaint (*h*) is, in inferior courts, not of record, as the County Court, the commencement (*i*) of the suit, and the general rules as to actions in superior courts apply. The limitation is the same in Manor (*k*) Courts, upon pleas of land, (*l*) for dower (*m*) or freebench. (*n*)

(*c*) Standing Orders, No. 178, 12th July, 1811, 22d June, 1829.

(*d*) *The King* v. *Stobbs*, 3 T. R. 735.

(*e*) Letters patent, 16 Car. 2.

(*f*) *Ward* v. *Honeywood*, 1 Doug. 61.

(*g*) 4 Inst. 79, 80; 1 Roll. 371, l. 30.

(*h*) *Mackalley's* case, 9 Rep. 65; Cro. Jac. 279; Jenk. 291; *Helliot* v. *Selby*, Salk. 701; 2 Ld. Raym. 902; *Williams* v. *Bagot*, (*Lord*), in error, 3 B. & C. 772; 5 D. & R. 719.

(*i*) Com. Dig. tit. County; (Court).

(*k*) *Rumsey* v. *Walton*, cited in 4 T. R. 446; *Holroyd* v. *Breare*, 2 B. & A. 473.

(*l*) 3 & 4 Will. 4, c. 27, s. 36; Copyhold cases, 4 Rep. 21.

(*m*) F. N. B. 16; *Lindsey* v. *Lindsey*, 1 Salk. 291.

(*n*) *Chapman* v. *Sharpe*, 2 Show. 198; *Lyndsey* v. *Dixon*, 4

But the Statute of Limitations does not extend to the petition (*o*) of a copyholder suing to the lord of the manor on error for false judgment, or to a writ of false judgment (*p*) returnable in a superior Court.

Where in a case of ancient demesne, (*q*) the rights of the lord have not (*r*) been recognized within twenty years, they become extinguished.

The process in the inferior Court is good evidence (*s*) of the pendency (*t*) of the suit there.

The Statutes of Limitations apply to the uses and trusts of copyhold estates. (*u*)

Where the inferior Court is of record, and issue is joined within six weeks next after defendant's appearance, the process *(certiorari)* for removal must be delivered before (*x*) one of the jury is sworn; where it is joined after (*y*) that time, and the judge is a barrister of three years' standing, the writ must be delivered before issue or demurrer joined.

19. A trader, upon personal service of the affidavit

Rep. 29; *Downes* v. *Hopkins*, Cro. El. 323; *Wheeler's* case, 4 Leon. 240; *Lashmer* v. *Avery*, Cro. Jac. 126.

(*o*) Moore, 68, *plac.* 185.

(*p*) Co. Lit. 60 a; Mich. 8 El. Rot. 136; F. N. B. 38.

(*q*) *Hunt* v. *Burn*, 1 Salk. 57; 1 Comyns, 97.

(*r*) 3 & 4 Will. 4, c. 74, s. 6.

(*s*) *Leader* v. *Moxon*, 3 Wils. 365; 2 W. Bla. 925.

(*t*) Britton, 138; Crompton on Courts, 133; *Blackamore's* case, 8 Rep. 157.

(*u*) *Shaw* v. *Thompson*, Moore, 410; *plac.* 559.

(*x*) 43 Eliz. c. 5, s. 2; *Cox* v. *Hart*, 2 Burr. 759; *Smith* v. *Sterling*, 3 Dowl. 609; *Laverack* v. *Bill*, 6 Dowl. 111.

(*y*) 21 Jac. 1, c. 23, s. 2; *Wait* v. *Combes*, 6 Dowl. 127.

of debt and notice, (z) must within twenty-one days afterwards, secure or compound the debt, or find security; or in default he commits thereby an act of bankruptcy; provided the fiat issues thereon within two calendar months. An application by the bankrupt for time to surrender to the fiat must be made more than six days (a) before the time originally appointed.

(z) 1 & 2 Vict. c. 110, s. 8.

(a) *Ex parte Burnell*, 2 Deac. 212.

CHAP. VI.

IN EQUITY.

1. *Claims in Equity* .. *page* 69
2. *Plea* 73
3. *Avoidance by Process* .. 74
4. *Appeal* ..... *ib.*

1. SUITS in equity (*a*) concerning lands must be brought within the same period (*b*) as is limited for those at law, (*c*) and the same rule extends (*d*) to the redemption of a mortgage. In the case of a concealed (*e*) fraud, the right of the party thereby deprived of the land accrues in equity at the time when the fraud could, with reasonable diligence, have been discovered. But no suit will lie even in such a case against a party who is a

(*a*) Æquitas est perfecta quædam ratio, quæ jus scriptum interpretatur et emendat.—1 Inst. 24; Bract. l. 4, fol. 186.

(*b*) Page 12; and see 1 Sch. & Lef. 352.

(*c*) 3 & 4 Will. 4, c. 27, s. 24; *Grenfell* v. *Girdlestone*, 1 Jurist, 940; Eq. Exch. 2 You. & Col. 662; *Collard* v. *Hare*, 2 Russ. & Myln. 775.

(*d*) 1 Vict. c. 28; *Bandon* (*Earl*) v. *Becher*, 3 Cla. & Fin. 479.

(*e*) Aliud est celare, aliud tacere:—neque enim id est celare, quicquid reticeas; sed cum, quod tu scias, id ignorare emolumenti tui causa velis eos, quorum intersit id scire.—*Cic. de Off.* lib. iii. c. 12, 13; 3 & 4 Will. 4, c. 27, s. 26; *Blennerhasset* v. *Day*, 2 B. & B. 129.

bonâ fide purchaser for a valuable consideration; (*f*) and provided he has not assisted in the commission of the fraud, and that when he made the purchase he did not know, and had not any reason to believe, that any such fraud had been committed. It is a fraud, (*g*) if a deed executed by an unlettered person is never or untruly read to him; and good faith forbids either party, by concealing what he *privately* knows, from drawing the other into a bargain where he is ignorant of the fact and believes the contrary. (*h*) In other cases the courts of equity can as heretofore (*i*) refuse relief on the ground of acquiescence, but which cannot ever be as to a right, of (*k*) which the party is ignorant at the time that he is entitled to acquire. A trust estate means a "right in equity" to take the rents and profits of the land, and whereof the legal estate is vested in some other person, and to compel the person thus seised of the legal estate to execute such a conveyance of the land, as the person entitled to the profits, and who is termed the *cestui que trust*, directs. In the meantime the *cestui que trust*, while in possession, holds as a *quasi* tenant at will to the trustee. By the provisions of the statute of frauds (*l*) declarations and creations of trusts of lands, tenements, and hereditaments, can only be manifested and proved by writing, signed by the party

(*f*) Money or other known thing or marriage; Cru. Dig. v. iv. p. 22, [s. 44]; 2 Keen, 81.

(*g*) *Thoroughgood's* case, 2 Rep. 9.

(*h*) *Carter* v. *Boehm*, 3 Burr. 1909; 1 W. Bla. 593.

(*i*) 3 & 4 Will. 4, c. 27, s. 27, *Appendix*.

(*k*) *Cholmondeley* v. *Clinton*, 2 Meriv. 362.

(*l*) 29 Car. 2, c. 3, s. 7.

entitled to declare such trust, or by his last will in writing. The right of the *cestui que trust* to bring a suit against his trustee to recover the land,—which forms the object of the trust, accrues upon a conveyance to a purchaser for a valuable consideration, as for marriage or money, and is *adverse* only as against (*m*) such purchaser and those claiming under him. An "equity of redemption" arises on the forfeiture of the legal estate, and becomes then a mere equitable right. In courts of equity it is treated as the fee simple of the land—passes to the heir—may be granted, devised, or entailed; and upon the mortgagee getting into possession either of the land or of the rents, or part, the mortgagor is put to a suit in equity to redeem, and which must be brought within twenty years (*n*) next after the taking of such possession, or of the receipt of the rents, or of an acknowledgment of the title of the mortgagor, or of his right to redeem, has been given in writing, signed by the mortgagee, or the person claiming under him, either to the mortgagor, or some person claiming under him, or his agent; the suit to redeem must be within twenty years next after such acknowledgment, or if more than one, then of the last. The right to recover in equity money so secured by mortgage, must be pursued within twenty years next after the accruing of a present title to some person capable of giving a discharge or release; or at least within twenty years next after a payment of part of the principal or interest, or an acknowledgment of his right is given in writing,

(*m*) 3 & 4 Will. 4, c. 27, s. 25, *Appendix*.

(*n*) Sect. 28; *Brocklehurst* v. *Jessop*, 7 Sim. 438.

signed by the person by whom it is payable, or by his agent; and either to the person entitled thereto, or his agent; (*o*) an account of rents and profits will only be decreed in equity for six years next before (*p*) the bill is filed there.

Part-payment means satisfaction of *part* of the debt in any form, (*q*) and not when paid in satisfaction of the whole. (*r*)

The acknowledgment by a trustee (*s*) (under a will of the obligor) will suffice, though by initials only. (*t*)

In a bill of discovery filed in equity, and grounded on a defence by reason of twenty years adverse possession, (*u*) a statement of this fact is sufficient, and to such a bill the defendant may plead and rely on the statute; (*x*) but where there are charges in the bill by which the effect of a plea may be destroyed, they must be met by answer or averment. Thus where the bill charges a debt due, and that letters lie in the hands of the defendant which show an acknowledgment within six years as to the existence of the debt; a plea of the statute, without noticing the charge or letters, will be overruled. (*y*)

(*o*) 3 & 4 Will. 4, c. 27, s. 28, *Appendix*.

(*p*) *Hercy* v. *Bellard*, 4 Bro. C. C. 46; *Stackhouse* v. *Bamstone*, 10 Ves. 469; 3 Mad. 186.

(*q*) *Moore* v. *Strong*, 1 Scott, 367.

(*r*) *Linley* v. *Bonsor*, 2 Scott, 401.

(*s*) *Philippe* v. *Money*, 2 M. & C. 309; *Jones* v. *Scott*, 1 Russ. & Myl. 255; *Sterndale* v. *Hankinson*, 1 Sim. 193.

(*t*) *St. John* v. *Boughton*, May 1, 1838, (V. C.)

(*u*) *Jarvis* v. *Evans*, July 24, 1838, (V. C.), 2 Jurist, 639.

(*x*) *Hindman* v. *Taylor*, 2 Bro. C. C. 7; *Burdett* v. *Twysden*, May 9, 1838, (V. C.), 2 Jurist, 805.

(*y*) *Foley* v. *Hill*, 2 Jurist, 440, (V. C.); 3 M. & C. 475.

The courts of equity will not after ten years (*z*) enforce as an equitable mortgage a deposit of deeds made at that time, and not set up for years afterwards; nor a claim of lien (*a*) on partnership assets, where the dissolution was ten years before; nor it seems allow a dividend (*b*) in bankruptcy for a debt to which the Statute of Limitations applied at the date of the fiat.

In the case of an equitable mortgage, the mortgagor must redeem within six months after the decree; (*c*) and an infant mortgagor must redeem within six months after he becomes of full age. (*d*)

Trusts for accumulations (*e*) are limited to twenty-one years from the death of the settlor, or the minority of a person then living.

2. In Courts of Equity the plea of the Statute of Limitations is valid, where there does not appear to be any item within six years; and there is not in the bill an allegation that the accounts were merchant's accounts: and if there is not any statement in the bill calling for such an allegation in the plea, it need not allege the absence of disabilities. But if the bill charges a promise against defendant, he must, in order to maintain his plea, (*f*) deny it therein.

(*z*) *Ex parte Jones, re Oliver*, 3 Mont. & Ayr. 152.

(*a*) *Ex parte Russell*, in *re James*, id. 192.

(*b*) *Ex parte* and *re Clarkson*, id. 154; *sed vide Ex parte Healey*, note.

(*c*) *Lewis* v. *John*, 1 Coop. 8; *Thorp* v. *Gartside*, 2 You. & Coll. 730; *Miller* v. *Wood*, 1 Keen, 16.

(*d*) *Price* v. *Carver*, 3 Myl. & Cr. 157; 7 Sim. 609.

(*e*) 39 & 40 Geo. 3, c. 98.

(*f*) *Foley* v. *Hill*, 3 Myl. & Cr. 475; 6 Ves. 586.

A devise in trust for the payment of debts will not revive a debt upon which the statute had taken effect by effluxion of time, when the testator or intestate died; (*g*) and in the case of a decree for a foreclosure, the heir being then an infant, must shew cause within (*h*) six months next after his coming of full age.

3. A suit in chancery is commenced by the filing (*i*) of the bill; and in a suit by the Queen on the filing of the information (*k*) on the part of her attorney general. Where the bill was filed in time, and subsequently amended, though by making a new party, it was held that the original and amended bill formed but one record. (*l*)

The time for filing a demurrer is eight days (*m*) after the bill is on the file, and it may be in term or vacation.

4. In the House of Lords, every petition of appeal from any decree or sentence of any Court in Equity, in England or Ireland, or of any Court in Scotland, must be presented there within two years (*n*) from the signing and enrolling, or extracting of such decree or sentence,

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(*g*) *Freake* v. *Cranefeldt*, 3 Myln. & Cr. 499; *Burke* v. *Jones*, 2 V. & B. 275; *Fergus* v. *Gore*, 1 Sch. & Lefroy, 109.

(*h*) *Scholefield* v. *Heafield*, 7 Sim. 609; 3 Myl. & Cr. 157.

(*i*) 4 & 5 Anne, c. 16; Prac. Reg. in Chan. 26, 27.

(*k*) Mitf. 6, 7.

(*l*) *Thorpe* v. *Mattingley*, 2 You. & Col. 421.

(*m*) *Bullock* v. *Edington*, 1 Sim. 481; General Orders, December, 1833.

(*n*) Standing Orders, No. 118; 24th March, 1725, 2d June, 1737, 22d June, 1829.

or at the latest before the end of fourteen days, to be accounted from and after the first day of session, or meeting of parliament next ensuing the said term of two years.

If when so entitled the party is under the age of twenty-one years, or a *feme covert*, *non compos mentis*, or in prison, or out of Great Britain or Ireland, the petition for reversing the decree or sentence must be brought within two years next after becoming of full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland; and fourteen days, to be computed from and after the first day of the session or meeting of parliament next ensuing the said term of two years; but in no case of absence is it allowed after five years from the date of the last decree or interlocutor appealed against.

When the appeal is from any Court in Westminster Hall, or any other Court of Equity in England, the appellant must, within eight days after (*o*) the appeal is received, give security to the clerk of the parliaments, and in the form of a recognizance to the Queen, in the penalty of £400, conditioned for the payment of all such costs, as upon the hearing, or by any order, the House may award; where it is from any Court in Scotland, (*p*) or from any of the Courts of Equity in Ireland, the appellant must give the like security within fourteen days next after the appeal is received by the House.

Where an answer has not been put in during the

(*o*) Standing Orders, No. 61; 22 June, 1829.
(*p*) Ibid.

same (*q*) session in which the appeal is presented, the appellant must within eight days, to be accounted from and after the first day of the next session or meeting of parliament, apply for a peremptory day for the respondent to answer. Where it is put in during the same (*r*) session as the appeal, and a day for hearing has not been appointed; this application must be within eight days from the first day of the next session or meeting of parliament.

On an appeal presented to the House, on or after the first day of any session or meeting of parliament, the appellant and respondent must respectively deliver in their printed cases (*s*) within four days after the time appointed for the respondent to put in his answer: and a cross appeal (*t*) by the respondent must be exhibited within a fortnight after his answer was put in to the original appeal.

(*q*) Standing Orders, No. 108, 29th March, 1720; No. 123, 28th March, 1735.

(*r*) Ib. No. 107, 29th March, 1720; and 5th April, 1734.

(*s*) Standing Orders, No. 177, 12th June, 1811, 22d June, 1829.

(*t*) Ib. No. 127, 8th March, 1763, 22d June, 1829.

CHAP. VII.

PROCEEDINGS OF A MIXED KIND.

1. *Privy Council* 77
2. *Patents for Inventions* .. 78
3. *Copyright* 79
4. *Ecclesiastical Courts—Admiralty* ..... *ib.*
5. *Non-residence* 81
6. *Insolvent Debtors' Act* .. 82
7. *Non-claim* ..... *ib.*
8. *Election—House of Commons* ..... *ib.*
9. *Conveyance of Lands*.... 83

1. Before the Judicial Committee (*a*) of the Privy Council the general rule is, that an appeal must be brought within one year (*b*) after the pronouncing of the decree or sentence in the Court below. It has full power (*c*) to regulate the limit for appeal from the Court of *Sudder Dewanny Adawlut* in the East Indies, or any other Court of judicature there eastward of the Cape of Good Hope. In appeals relative to the abolition (*d*) of the slave trade, and prosecuted from the decree or sentence of any Court of Admiralty, or Vice Admiralty, the inhibition must be applied for and decreed

(*a*) 3 & 4 Will. 4, c. 41.
(*b*) *Gordon* v. *Lowther*, 2 Ld. Raym. 1447.
(*c*) 3 & 4 Will. 4, c. 41, ss. 22, 24.
(*d*) 5 Geo. 4, c. 113, s. 29.

within twelve months next after the time of its being pronounced, or if passed by a Court at the Cape of Good Hope, or to the eastward thereof, then the time limited is eighteen months. These provisions are conclusive, (*e*) and this tribunal will not extend the time even though the delay has arisen from circumstances beyond the control (*f*) of the appellant.

The appellant must, (*g*) unless further time is allowed, bring his appeal to a hearing within a year and a day. But under special circumstances (*h*) and where the respondent did not apply for eight months to dismiss the appeal, the committee allowed an appeal under the Canada Judicature Act, (*i*) to be prosecuted at an enlarged time.

2. After a patent for an invention has passed the Great Seal, a specification of the invention (*k*) must be made out and enrolled in the Petty Bag Office in Chancery within the time stated in the letters patent.

In order to obtain an extension of the term (fourteen years (*l*)) limited by the letters patent a petition from the applicant must be made and prosecuted with effect before (*m*) the expiration of the term; and in this case the Queen, upon the report of the Judicial Committee

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(*e*) *Muter* v. *Chipchase*, 1 E. F. Moore, 1.
(*f*) *Lindo* v. *The King*, 1 E. F. Moore, 3.
(*g*) *Orphan Board* v. *Van Reenen*, Knapp's Cases, 93.
(*h*) *St. Louis* v. *St. Louis*, 1 E. F. Moore, 143.
(*i*) (Canadian Act) 34 Geo. 3.
(*k*) *Harmer* v. *Playne*, 11 East, 101.
(*l*) 21 Jac. 1, c. 3, s. 6; *Mitchell* v. *Reynolds*, 10 Mod. 131.
(*m*) 5 & 6 Will. 4, c. 83, s. 4.

of the Privy Council, may grant new letters patent for the invention, and for a term not exceeding seven years from the expiration of the original term.

In *scire facias* to repeal letters patent for an invention, the prosecutor must file with his declaration a notice (*n*) of the objections. And the defendant, in pleading to an action on the case, brought for an infringement of his patent, must at the time of pleading serve a like notice; but in special cases, the Court or a judge can allow the plea and notice to be withdrawn (*o*) and new objections to be delivered.

3. The author of every printed book has the sole copyright therein for twenty-eight years, and if he is living at the end of that time, for his life. (*p*) The author of every tragedy, comedy, play, opera, farce, or other dramatic piece or entertainment, printed and published by the author or his assignees, has the like privilege, (*q*) and if not so printed and published his right is unlimited.

4. A *caveat* is used in the Ecclesiastical Courts in order to prevent administration or the like; (*r*) it may be entered in the lifetime of the incumbent, (*s*) and

(*n*) 5 & 6 Will. 4, c. 83, s. 5.

(*o*) *Losh* v. *Hay*, Exch. H. T. 1838, 2 Jurist, 157.

(*p*) 54 Geo. 3, c. 156, s. 4; Curia Cancellaria, Lofft, 775.

(*q*) 3 & 4 Will. 4, c. 15, s. 1.

(*r*) 1 Burn Eccles. Law, 264; Gibson, 778.

(*s*) *Hitcham and Glovers' case*, 2 Ro. 6; *Hitching* v. *Glover*, 1 Ro. 191.

continues in force for three months, and according to the canon law, (*t*) proceedings taken after its entry and even before the ordinary has notice, are void. (*u*)

The commencement of the suit for the purpose of avoiding the Statute of Limitations is, by service (*x*) of the citation, and whether on the person or *viis et modis.* (*y*) In suits strictly (*z*) under the canon law (*a*) the limitation is five years.

"*Adulter accusari non potest post quinquennium.*"

Six calendar months is the time limited for defamatory words (*b*)—or for fornication, incontinence, or striking or brawling in any church or churchyard. (*c*)

In the Ecclesiastical Courts, in a suit for defamation the issue, which is commonly considered as the real (*d*) commencement of the suit, must be joined within one year (*e*) next after the words complained of were spoken,

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(*t*) *Hitcham* v. *Glover*, 2 Ro. 6; 1 Lev. 157; *Newman* v. *Beaumond*, Owen, 50; *Morgan* v. *Roan*, Poph. 133.

(*u*) *Hitching* v. *Glover*, 1 Ro. 191; *Zouch's case*, Golds. 146.

(*x*) *Ray* v. *Sherwood*, 1 Curt. 173; 193; *Williams* v. *Bolt*, 1 Hagg. 1; 25 Ed. 3, st. 6.

(*y*) *Alanson* v. *Brookbank*, Carth. 504; 5 Mod. 450; 2 Salk. 625.

(*z*) Sanchez, lib. x. desp. 3, s. 9; *Lex Julia Dig.* Lib. 48, *tit.* 5, s. 29, p. 6; *Wilk Leges Angl. Sax.* 292, 293; Selden notes ad *Eadmerum.*

(*a*) *Bishop of St. David* v. *Lucy*, Carth. 485; Moore, 783; *Matthew* v. *Burdett*, 2 Salk. 412; *Phillips* v. *Bury*, 1 Ld. Raym. 7.

(*b*) 27 Geo. 3, c. 44, s. 1.

(*c*) S. 2; *Free* v. *Burgoyne*, (in error), 2 Bligh, N. S. 65; 1 Dow. N. S. 115; 5 B. & C. 400; 8 D. & R. 179.

(*d*) *Bowser* v. *Ricketts*, 2 Hagg. 213.

(*e*) *Goldingay* v. *Hill*, Arches, 1783, before Dr. Calvert.

and suits here for any legacy, tithes, or other property must be brought within the same period (*f*) as if at law or in equity. The limit, (*g*) when for not setting out tithes or to recover the value of any tithe, is six years.

Suits (*h*) in the Court of Admiralty for seaman's wages must be brought within six years. But there are the same disabilities as *ante*. (*i*)

In these cases appeals from definitive sentences and decrees must be within fifteen days afterwards, both from the Ecclesiastical Court (*k*) and the Court of Admiralty. (*l*)

5. In cases of non-residence the beneficed person must within thirty days after service of the monition (*m*) make a return thereto to the bishop; and on an order being made he must proceed to residence within thirty days after service of the order.

Within six months after the order for sequestration, or after levy thereunder, the bishop may remit any part of the proceeds to the beneficed person.

An appeal to the archbishop of the province must be within one month after service of the order of sequestration.

(*f*) 3 & 4 Will. 4, c. 27, s. 43; *Appendix*.

(*g*) 53 Geo. 3, c. 127, s. 5; *Talory* v. *Jackson*, Cro. Car. 513.

(*h*) 4 Anne, c. 16, s. 17; *Hide* v. *Partridge*, 11 Mod. 44.

(*i*) P. 29; *Hide* v. *Partridge*, 11 Mod. 44, *n*.

(*k*) 24 Hen. 8, c. 12, s. 7; 25 Hen. 8, c. 19, s. 3; *Savill* v. *Kirby*, 10 Mod. 386.

(*l*) *Chambers'* case, 1 Keb. 10, pl. 24; *Brown* v. *Bean*, 1 Ld. Raym. 1248.

(*m*) 1 & 2 Vict. c. 106, s. 54.

Where the beneficed person again, and within twelve calendar months, absents himself, the bishop may issue at once a sequestration, but subject to the like appeal. (*n*)

6. A prisoner intending to claim the benefit of the Insolvent Debtors' Act (*o*) must in ordinary cases present his petition within fourteen days next after the commencement of his actual custody.

And every person charged in execution must within twenty-one days afterwards (*p*) satisfy the debts and costs, or damages, or costs, or he is liable to be brought before the Insolvent Court by the creditor.

7. The owner of goods upon a wreck, *flotsam*, *jetsam* and *ligan*, and also of an estray, has one year and a day from the time (*q*) of seizing them as such, provided a commission to inquire or action is commenced within that time; (*r*) and if there is a nonclaim for this period all persons, save the Queen, are barred.

8. Every candidate at an election for a seat in the House of Commons, not being for one of the two Universities in England, or the eldest son of a peer, or person qualified by property to be a knight of the shire (*s*) must within twenty-four hours (*t*) *after* a request

(*n*) S. 56.
(*o*) 1 & 2 Vict. c. 110, s. 35.
(*p*) S. 36.
(*q*) 3 Ed. 1, c. 4; 2 Inst. 168; Dalt. Sheriff, 91; Vaughan, 168.
(*r*) *Constable's* case, 5 Rep. 107 b; 1 And. 86.
(*s*) 9 Anne, c. 5, s. 1.
(*t*) 1 & 2 Vict. c. 48, s. 3.

made either at the time of the election or before the day named in the writ of summons for the meeting of parliament by any candidate, or by two or more electors, make and subscribe a declaration as to his qualification; and upon his wilful refusal or neglect his election and return become void.

The officer before whom the declaration is made must within three months (*u*) after the time of making it, certify the making unto the Court of Chancery or the Queen's Bench, and under a penalty of 100*l.*

The member elected must (*x*) before he sits in the house or votes, except for the Speaker, deliver in there at the table a statement of his qualification, and sign a declaration as to its truth, or else (*y*) his election becomes void.

9. A bargain and sale of freehold lands must be enrolled within six months after (*z*) the date, or if none (*a*) then of the delivery; and upon this it takes effect from the delivery. (*b*)

A memorial of the deeds and securities of an annuity granted for a pecuniary consideration, must be enrolled in Chancery within thirty days. (*c*)

All grants, conveyances, and assurances relating to the exchange of lands under the Benefices Plurality

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(*u*) S. 4.

(*x*) S. 6.

(*y*) S. 8.

(*z*) *Thomas* v. *Popham*, 2 Dy. 218, pl. 6; Dal. 41; Moore, 40, pl. 128; *Norris* v. *Hundred of Gawtry*, Hob. 139, 140.

(*a*) *Norris* v. *Hundred of Gawtry*, Hob. 140; 5 Rep. 1 b.

(*b*) *Mallory* v. *Jennings*, 2 And. 161.

(*c*) 53 Geo. 3, c. 141; 3 Bing. 215; 6 B. & C. 49.

Act, (*d*) must be enrolled in Chancery within six calendar months. (*e*)

Benefices which have been united for more than sixty years before the passing (*f*) of the Benefices Plurality Act, are not to be disunited without the consent in writing of the patrons thereof. (*g*)

(*d*) 1 & 2 Vict. c. 106.
(*e*) S. 18.
(*f*) 14 August, 1838.
(*g*) S. 21.

CHAP. VIII.

OF A CRIMINAL KIND.

1. *Informations* 85
2. *Indictments* 86
3. *Proceedings before Justices* 87
4. *Appeals to the Sessions* .. 88

1. An information *ex officio* when on the part of a private prosecutor must be moved for in the Queen's Bench before the lapse of two whole terms (*a*) after the commission of the offence complained of. And when against a magistrate (*b*) it cannot be moved so late in the second term as to preclude him from showing cause against it in the same term. (*c*)

The prosecutor must within one year (*d*) after issue has been joined therein proceed to trial, or the defendant will be entitled to his costs, and if they are not paid within three months after taxation, proceedings (*e*) may be had on the recognizance.

In an information in the nature of a *quo warranto*, the defendant may rely on and plead the statute of limitations, (*f*) *viz.* that he has enjoyed the office or franchise for six years or more, and if he succeeds

(*a*) Gude's C. O. Practice, v. 1, 112, *n*.
(*b*) *Rex* v. *Harries, Esq.* 13 East, 270.
(*c*) *Rex.* v. *Marshall and another*, 13 East, 322.
(*d*) 4 & 5 W. & M. c. 18, s. 2 ; 1 Salk. 194 ; 10 Rep. 16.
(*e*) Id. *The Queen* v. *Clerk*, 7 Mod. 47 ; 3 Burr. 1616.
(*f*) 32 Geo. 3, c. 58, s. 1, 2 ; *Rex* v. *Antridge*, 8 T. R. 467.

thereon he will be entitled to judgment and his costs. (*g*)

2. There is not any general Statute of Limitations affecting criminal offences, though there are some particular statutes which limit the prosecution of offences under them to a specific period, as by 7 Will. 3, c. 3, (*h*) no person can be prosecuted for high treason, unless the indictment be found by the grand jury within three years after the commission of the offence, unless for attempting the assassination of the king. So an indictment under the 8 & 9 Will. 3, c. 26, (*i*) for having possession of a die, made of iron, steel or other materials, for the purposes of coining, must be preferred within three months, and the *onus* lies on the prosecutor to show that it was so commenced. (*k*) It has however been held, that an information under this act before a magistrate is a sufficient commencement; although the commitment is informal. (*l*) By 23 Eliz. c. 1, the inquiry respecting any offence for non-attendance at church and sacrament must be instituted within (*m*) a year and a day.

And it is provided by 31 Eliz. c. 5, (*n*) that all indictments upon any statute penal where the forfeiture

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(*g*) 9 Anne, c. 20, s. 4, 5, 6; *Rex* v. *Dickin*, 4 T. R. 282; Id. 684.

(*h*) Sect. 5, 6.

(*i*) Sect. 1, 5.

(*k*) *Rex* v. *Phillips and Another*, 1 R. & R. 369.

(*l*) 1 East, P. C. 186.

(*m*) 1 East, P. C. 18.

(*n*) S. 5; 2 Hawk. P. C. 171; *Culliford* v. *Blandford*, 4 Mod. 129.

is limited to the queen, shall be sued within two years after offence committed, if the forfeiture be limited to the queen and prosecutor the suit shall be in one year, and in default thereof, the same shall be sued for the queen within two years after that year ended. But where a statute limits a shorter time, the suit must be brought within the time so limited. (*o*) To constitute a *felo-de-se* the party must die within one year from the stroke. (*p*)

3. Complaints before justices of the peace for the recovery of small tithes, offerings, oblations, obventions and compositions must be made within (*q*) the space of two years next after their becoming due and payable; and if for offences under the Hackney Carriages Act, (*r*) within seven days next after the commission of the offence; (*s*) and for deer stealing, within twelve lunar months. (*t*) An order of justices made under 1 & 2 Vict. c. 80, for the payment of remuneration (*u*) of special constables, (*x*) and upon the treasurer or other officer of a public company, must be paid within three weeks next (*y*) after demand.

The seven days which a party convicted under 11

(*o*) Burn, J. tit. *Indictment*, III.
(*p*) *Hales* v. *Petit*, Plow. 262.
(*q*) 7 & 8 Will. 3, c. 6, s. 6; *Appendix*.
(*r*) 1 & 2 Vict. c. 79.
(*s*) S. 24—27.
(*t*) *Rex* v. *Peckham*, 5 Mod. 321; Carth. 407; Comb. 439.
(*u*) Sect. 1.
(*x*) 1 & 2 Will. 4, c. 41; 5 & 6 Will. 4, c. 43.
(*y*) Sect. 3.

Geo. 4, and 1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85, (Beer House Acts,) has for paying a penalty imposed on him before a distress warrant can issue, are to be reckoned one day exclusively, and the other inclusively (*z*).

4. With respect to appeals to the sessions, the ordinary mode is to reckon one day exclusive, and the other inclusive. (*a*) The term "*clear days*" excludes (*b*) both the day of serving the notice and that of holding the sessions, and "*so many days at least*" (*c*) means *clear* days; and the "*next general sessions*" (*d*) is intended and reckoned from the grievance. (*e*) If it is lodged and received there it is sufficient. (*f*)

Under the statute 13 Geo. 2, c. 18, s. 5, a *certiorari* to remove an order for stopping a highway may be applied for within six calendar months after such order has been confirmed at sessions, though more than six calendar months have elapsed since the order was made. (*g*)

(*z*) *Newman* v. *Earl of Hardwicke*, 3 N. & P. 368.

(*a*) *Rex* v. *The Justices of the West Riding of Yorkshire*, 4 B. & Ad. 685; *Pellew* v. *Hundred of Wonford*, 9 B. & C. 134; 4 M. & R. 130.

(*b*) *Rex* v. *The Justices of Herefordshire*, 3 B. & A. 581; *Zouch* v. *Empsay*, 4 B. & A. 522.

(*c*) *The Queen* v. *The Justices of Salop*, 2 N. & P. 286.

(*d*) *Rex* v. *Adams*, 11 Mod. 294; *Rex* v. *Shaw*, 2 Salk. 482; 12 Mod. 203; *Rex* v. *Chichester*, 3 T. R. 496.

(*e*) *The King and Ogden*, Fort. 252.

(*f*) *Marsh's Case*, Comb. 365; *Cockfield and Boxon*, ib. 418.

(*g*) *Rex* v. *Middlesex (Justices)*, 5 Ad. & El. 626.

Appeals for convictions under the Vagrant Act (*h*) must be at the next general or quarter sessions. (*i*)

Under the Dean Forest Mines Act (*k*) they must be to some general or quarter sessions of the peace for the county of Gloucester, and within four calendar months (*l*) next after the cause of complaint, or if held within one calendar month then to the next sessions afterwards.

Under the Custody of Insane Persons Act, (*m*) they must be to the next (*n*) general sessions of the peace.

Under the Poor Law Amendment Act, (*o*) for an order of filiation on the reputed father, (*p*) the application must be (*q*) to the next sessions after the bastard child becomes chargeable.

Against a poor rate (*r*) it must be to the next sessions, and against an order for removal under the Act for the Amendment of the Law as to the Poor, (*s*) the

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(*h*) 5 Geo. 4, c. 83, s. 14.

(*i*) 1 & 2 Vict. c. 38, s. 1.

(*k*) Id. c. 43.

(*l*) Sect. 77.

(*m*) 1 Vict. c. 14.

(*n*) Sect. 2.

(*o*) 4 & 5 Will. 4, c. 76.

(*p*) *Rex* v. *Justices of Salop*, 6 Dowl. 28; *Rex* v. *Justices of Cornwall*, 6 Ad. & El. 894.

(*q*) *Rex* v. *Heath*, 5 Ad. & El. 343; *Rex* v. *Justices of Oxfordshire*, 5 Dowl. 116.

(*r*) *Rex* v. *St. Giles's Parish*, 11 Mod. 259; 1 Bott. 222, pl. 225; *Rex* v. *Coode*, Cald. 464; 1 Const. Poor Law, 236, pl. 240.

(*s*) 4 & 5 Will. 4, c. 76, s. 81.

grounds of appeal must be sent in fourteen clear days (*t*) before the sessions.

An appeal against overseers' accounts (*u*) must be to the next sessions (*x*) after the accounts have been published and deposited with the parish officers for public inspection.

(*t*) *Rex* v. *Inhabitants of Kimbolton*, 1 Nev. & P. 606; *Rex* v. *Suffolk*, (*Justices*), 4 Ad. & El. 319; *Reg.* v. *Derbyshire* (*Justices*), 6 Ad. & El. 612 n.; *The Queen* v. *Justices of Salop*, 6 Dowl. 33; 3 N. & P. 286.

(*u*) 59 Geo. 3, c. 12, s. 7.

(*x*) *Rex* v. *Worcestershire*, 5 M. & S. 457; *Rex* v. *Thackwell*, 4 B. & C. 62; 6 D. & R. 61; *Rex* v. *Justices of Dorsetshire*, 15 East, 200; *Rex* v. *George Watts*, 2 N. & P. 367.

APPENDIX

OF

STATUTES AND FORMS.

MODE OF CONSTRUCTION.

THE common law, in some instances, defined the time for bringing actions, *omnes actiones in mundo infra certa tempora limitationem habent*"(*a*); and where the heir made a claim to land on the death of his ancestors, he was limited to a year and a day. "*Si quis infeudatus major quatuordecim annis, sua incuria vel negligentia, per annum et diem steterit: quòd feudi investituram à proprio Domino non petierit: transacto hoc spatio; feudum amittat, et ad Dominum redeat;*" (*b*) and in such case, upon default, the law presumed a desertion and dereliction. (*c*) The law so remains as to an estray of cattle into the manor of a lord who has title to estrays by prescription or grant, and if they continue there for a year and a day, (being proclaimed at the next markets and churches,) and without challenge, (*d*) the property becomes vested in the lord. (*e*) But the more important limitations now in force are by virtue of acts of the Parliament. (*f*) They consist of laws passed by all the three branches of the legislature—

(*a*) Bracton, lib. ii. fol. 228.
(*b*) Spelm. Gloss. 33.
(*c*) Ib.; *annus et dies*, 31—33.
(*d*) 1 Rol. 879, l. 35; Bro. Estray, 1; Estray, 12 Rep. 101; Hutt. 67; 2 Cro. 513.
(*e*) Brit. Ca. 17; Bendl. pl. 27.
(*f*) Co. Litt. 14 b, 15 a; 2 Inst. 94, 95; 2 Rol. Abr. 111; Hale, His. of Law, 122; 2 Keb. 45, pl. 94.

the Queen, the Lords Spiritual, and the Commons in Parliament assembled. An act so passed is of the highest authority known to the constitution, it can only be altered, repealed, or suspended by the same power, and cannot by any disuse, however long, (*g*) cease to be obligatory. It does not require any formal promulgation, and takes effect from the date of the indorsement thereon by the clerk of the parliament, of the day, month, and year when it received the royal assent, (*h*) unless its commencement is otherwise specially provided for therein. The Courts of common law (*i*) are entrusted with the duty of expounding statutes. (*k*) In the acts upon the Parliament Roll there are not any points, commas, colons, semicolons, or other notes or signs of division, for these are added by the printer, and therefore upon the Roll the whole makes one paragraph, and the sense is to direct the division; (*l*) where the act refers to a particular limitation, no further time is to be gained by equity or exposition beyond the very letter. (*m*) With respect to its parts, the title is not included, (*n*) the preamble is generally the key to its construction; (*o*) it cannot control the enacting clauses where the sense of them is clear, (*p*) though it may do so where the words are "general." (*q*) The language of the preamble, particular clauses, and indeed of the whole act must be taken into consideration; and if in some of the enacting clauses expressions are used of more extensive import than in others, or than in the preamble, and upon a view of the whole enactment it appears to have been the intention of the legislature that they should have effect, the

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(*g*) *White* v. *Boot*, 2 T. R. 274.

(*h*) 33 Geo. 3, c. 13.

(*i*) Marsh. 90, pl. 148; 4 Inst. 614.

(*k*) *Gould* v. *Gapper*, 5 East, 370; 1 Smith, 528.

(*l*) *Mr. Crooke's case*, 1 Show. 202.

(*m*) *Stowel* v. *Lord Zouch*, Plowd. 371.

(*n*) *Rex* v. *Williams*, 1 W. Bla. 95; *Butler and Baker's case*, 3 Rep. 35 a; *Att. Gen.* v. *Hutchinson*, Hardr. 324; *Chance* v. *Adams*, 1 Ld. Raym. 77; 19 Vin. 510, pl. 17; 6 Mod. 62.

(*o*) *Mace* v. *Cammel*, Lofft, 783; *Anon.* id. 398.

(*p*) *Crespigny* v. *Wittenoom*, 4 T. R. 793.

(*q*) *Gray* v. *Soames*, 2 Jurist, 1040 (B. C.)

judges will so construe it. (*r*) If any part is obscure, and other passages will elucidate the obscurity, recourse may be had for this purpose to the general context; (*s*) and when there are several acts upon the same subject of limitation, (*t*) they are to be taken together, as forming an entire system, and as interpreting and enforcing each other; (*u*) affirmative words are generally to be construed in a "directory" sense only, (*x*) while those in the "negative" are imperative. (*y*) When the scope of the enactment appears to be general, the meaning is to be looked to, and it is to be extended to particular cases within the same reason; (*z*) and therefore though there are not in the enacting clause, particular words which relate to the point relied on; yet a proviso, which restrains the severity of the former clause and restores the common law, ought to be taken favourably; (*a*) a remarkable instance of this occurs in 21 Jac. 1, c. 16, where the action "on promises" is omitted in express terms in the proviso, and yet it has been held to come within its intent and meaning. (*b*) And where the enacting clause creates an offence and gives a penalty, and afterwards there follows in another clause an exemption, but which is not incorporated by any words of reference with the enacting clause, the plaintiff in suing for the penalty need not in his declaration notice the proviso. (*c*) The usual practice is to add several provisoes, as is done in 3 & 4 Will. 4, c. 27, and every one of which takes off from the enacting parts; (*d*) in which case the general sense is to be collected from the several parts of

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(*r*) *Doe* v. *Brandling*, 7 B. & C. 643; 1 M. & R. 600.

(*s*) *Rex* v. *Palmer*, 1 Leach, C C. 352, 355.

(*t*) *E.g.* 21 Jac. 1, c. 16; and 9 Geo. 4, c. 14; *Appendix*.

(*u*) *Earl of Ailesbury* v. *Pattison*, 1 Doug. 28; *Doe* v. *Yarborough* (Lord), 7 J. B. Moore, 258: 1 Bing. 24.

(*x*) *Rex* v. *Flockwood Inclosure* (*Commissioners*), 2 Chit. 251.

(*y*) *Rex* v. *Leicester* (*Justices*), 7 B. & C. 12; 9 D. & R. 772.

(*z*) *Crosier* v. *Tomlinson*, 2 Mod. 71; 8 Mod. 8.

(*a*) *Murrey* v. *Eyton*, 1 T. Raym. 355; 1 Jo. 105.

(*b*) *Bewfage's case*, 10 Rep. 101; 2 Mod. 71.

(*c*) *Steel* v. *Smith*, 1 B. & A. 94; *Gill* v. *Scrivens*, 7 T. R. 31.

(*d*) *Lyn* v. *Wyn*, Oil. Bridg. 128.

the act, (*e*) and therefore a provision, limiting actions for any thing done in pursuance thereof, or in the execution of the powers and authorities thereby granted, to a defined period after the cause of action has occurred, extends to cases where a party does an act within the limits of his official authority, but exercises it improperly, or abuses its discretion placed in him, provided he can be reasonably considered to have *bonâ fide* believed himself acting within it; (*f*) a thing limited by particular words is not abrogated by subsequent general words; (*g*) a proviso, directly contrary to the "purview," cannot it seems prevail against, (*h*) but may restrain or qualify it. (*i*) A "term of art," known in use at the common law, is to be taken in that sense; (*k*) and words which have not a legal meaning, such as "inhabitants," must be construed according to the subject-matter and the context where they are used; (*l*) a saving in favour of an infant may be extended so as to preserve for one *en ventre sa mere* its right as accruing on its birth. (*m*) In some modern acts a clause of construction is given, as in 3 & 4 Will. 4, c. 27; (*n*) but where this is not done the ordinary rules of construction prevail; by these, the Queen is not bound, (*o*) and this whether the act is affirmative or negative, unless named expressly, or the words "person or persons, bodies corporate or politic," be used. (*p*) Where the name of the Queen is expressly mentioned, the act extends, and without further expression, to all her successors; (*q*) all these statutes are to be construed as

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(*e*) *Rex* v. *Berchett*, 1 Show. 108; *Stevens* v. *Duckworth*, Hardr. 344; 4 Bac Abr. 645, tit. Statute.

(*f*) *Gaby and another* v. *The Wilts and Berks Canal Company*, 3 M. & S. 580.

(*g*) *Standon* v. *University of Oxford*, 1 Jo. 26.

(*h*) *Alton Woods' case*, 1 Rep. 47 a; Plow. 563 b; Mo. 309; *Att. Gen.* v. *Governor of Chelsea Waterworks*, Fitzg. 195.

(*i*) *Le Roy* v. *Priest*, 1 Jo. 339; 10 Mod. 115.

(*k*) *Smith* v. *Harman*, 6 Mod. 143; Hob. 97.

(*l*) *Rex* v. *Mashiter*, 1 N. & P. 314; 1 W. W. & D. 173.

(*m*) *Stowel* v. *Lord Zouch*, Plowd. 366.

(*n*) S. 1; *Appendix*.

(*o*) *Magdalen College case*, 11 Rep. 66, b; Plow. 240.

(*p*) *Willion* v. *Berkley*, Plowd. 244; 11 Rep. 70 a.

(*q*) *Soldier's case*, 6 Rep. 27 a; 2 And. 151; Jenk. 271

much as possible, so as to prevent "delay," (r) and whenever any thing is "in general words" provided for, all remedies and requisites thereto are supplied by the effect of the common law; (s) but where "proceedings" are mentioned, they mean according to law or equity, and do not extend to a right of lien. (t) In construing several acts together, there is a certain rule to be observed; where the latter provides that "all the powers, provisoes, regulations, clauses, matters, and things," in the former shall extend to the subsequent one, the latter must be construed so as to include the objects of the former, even though not expressly re-enacted. (u) Statutes have not any retrospective operation beyond the time of their commencement; (x) unless by express provision, the maxim of law being *nova constitutio futuris formam debet imponere non præteritis;* where no particular time is limited the act is perpetual, but it may be repealed even by implication, (y) if such be evident, (z) upon the principle *leges posteriores, priores abrogant.* A reviving act re-enacts the provisions of the former, though it has even expired, and becomes, together with the former, (a) the statute in force; (b) and in making a continuing act no particular form of words is requisite; (c) where an act professes to repeal absolutely a prior law, and substitute other provisions on the same subject, and which are limited to continue only until a defined period, the prior act does not, after the repealing act is spent, revive, unless such an intention is express; (d) and if the act is repealed before the Court

(r) 2 Inst. 139, 315, 393.

(s) 2 Inst. 458, 501.

(t) *Spears* v. *Hurtly*, 3 Esp. 81.

(u) *In the matter of the Lords of the Treasury*, 1 Mylne & Cr. 676.

(x) *Gilmore* v. *Executor of Shooter*, 2 Mod. 310; 2 Lev. 227.

(y) 4 Inst. 43; *Foster's case*, 11 Rep. 61; *Hill and another* v. *Shish*, 2 Show. 512.

(z) *Thornby* v. *Fleetwood*, 10 Mod. 118; 2 Com. 217.

(a) *Attorney-General* v. *Pougett*, 2 Price, 381; *Shipman* v. *Henbest*, 4 T. R. 109.

(b) *Rex* v. *Phipoe*, 2 East, (P. C.) 599; *Rex* v. *Morgan*, Ib. 601.

(c) *Rex* v. *Longmead*, 2 Leach, (C. C.) 694.

(d) *Warren* v. *Windle*, 3 East, 205.

give judgment in its favour, none can ever be given. (*d*) The statutes of limitation which refer to proceedings in Courts of law extend to inferior Courts, though not of record, as a Court baron, (*e*) or a Court of ancient demesne. (*f*) And when the limitation has run out, a right is acquired by the adverse party, which cannot, even though a receiver was appointed in a Court of equity, be restrained by injunction. (*g*) There are certain acts, as 21 Jac. 1, c. 16, which do not refer to Courts of equity, and yet in such cases these Courts commonly act upon the same principles. (*h*) Great strictness is requisite in the "computation of time," and therefore where an act imposes terms and prescribes a thing to be done within a specified time, the lapse of even a day is fatal, because no terms can be admitted except those which satisfy the statute, (*i*) and in the very sense of expression; (*k*) except in cases where the express enactment is extended beyond the "letter," so as to embrace the same principles—thus, where an act for allotting waste lands within a manor, directed all disputed claims to be tried by a feigned issue, and limited the time for bringing such proceeding to six years, it was held, that an action brought against a copyholder within that time must, on its being abated by his death, be revived against the heir within six months after the plaintiff had notice of the descent, and this, though the heir was not admitted until after that time; (*l*) and the same rule holds good in three remarkable cases—1, where the creditor brings his suit within the time limited and dies, it is held, that his representative may, after the limitation has expired, and within a year from the death bring a new action; (*m*) 2, where a suit commenced in

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(*d*) *Rex* v. *Mawgan (Inhabitants)*, 3 N. & P. 502; *Miller's case*, 3 Wils. 420; 1 W. Bla. 451.

(*e*) Bro. St. Lim. 21.

(*f*) Ib. 22.

(*g*) *Anon.* H. 1737; *Anonymous*, 2 Atk. 15.

(*h*) *White* v. *Parnther*, 1 Knapp's Cases, 179, 228.

(*i*) *Farrell* v. *Tomlinson*, 5 Bro. (P. C.) 538.

(*k*) *Lee* v. *Rogers*, 1 Lev. 110.

(*l*) *Knight* v. *Bate*, 2 Cowp. 738.

(*m*) *Kinsey* v. *Hayward*, 1 Ld. Raym. 434; Willes, 257, note.

an inferior Court within time, is removed into a superior Court; the action may be commenced in the latter even after the limited period, provided it be so "recently;"(n) and 3, where an action in any Court respecting the Queen's revenue is within time, and further proceedings are restrained by her prerogative, here an action may be, if done so forthwith, commenced for the same cause of action in the Exchequer. (o) These instances are not mentioned in the act 21 Jac. 1, c. 16, or other statute, but if the statute is relied on by plea, a replication of the special facts will be good. (p) The time limited is commonly defined by the act, and where it imposes penalties a year is the ordinary period;(q) the computation is from the act done, but the day on which it is done is commonly excluded from the computation. (r) The word month means, where the sense "calendar" cannot properly be inferred from the context, a lunar month of 28 days. (s) The Courts are bound *ex officio* to take notice of the calendar; (t) where a time certain is not expressed, the limitation means a "reasonable time,"(u) and this is in its nature a "*definite*" period. (x) The commencing of an action is only made out by actual issuing of process; and the filing of a mere *præcipe*, (y) or an application for process, though in time, and immediately followed, but out of time, by process, (z) are unavailable; neither is such a provision complied with by reference to a bill in equity, for this is not an action in a Court of law; (a) where an act directs a mode of procedure to be adopted, it must be adopted, and an

(n) *Matthews* v. *Phillips*, 2 Salk. 424; 1 Sid. 228.
(o) *Cawthorne* v. *Campbell*, 1 Anstr. 205, 210.
(p) 2 Saund. 63 c; *Story* v. *Atkins*, 2 Ld. Raym. 1430.
(q) *Payne* v. *Hill*, Lofft, 330.
(r) *Webb* v. *Fairmainer*, 6 Dowl. 549.
(s) *Lacon* v. *Hooper*, 6 T. R. 224; 1 Esp. 246; *Glassington* v. *Rawlins*, 3 East, 407; 2 Blac. Com. 141.
(t) *Page* v. *Faucet*, Cro. Eliz. 227; 1 Leon. 328.
(u) *Palmer* v. *Moxon*, 2 M. & S. 43; 2 East, 403.
(x) Ib. 50, per Lord Ellenborough, C. J.
(y) *Boyd* v. *Durand*, 2 Taunt. 161.
(z) *Briggs* v. *Calverly*, 8 T. R. 629.
(a) 1 Ch. R. 205, 215.

equivalent is not sufficient. (*b*) So much of the act as makes for the party pleading, (*c*) must be relied on in the pleading, (*d*) and in the very words of it, (*e*) or at least of equivalent import. (*f*) Long established forms of pleading and precedents adopted in general and approved practice by pleaders of acknowledged professional learning and skill, are of great authority in the absence of decided cases as to the proper mode of relying on provisions of statutes of limitation; (*g*) and where one party in pleading pleads only so much as it is his interest to plead, the opposite party may in his pleading in answer rely on other matter, (*h*) the general rule being, that where there is any proviso or exception in the clause of an act so relied on, it should be noticed in the pleading, for here it is parcel of the clause. (*i*)

(*b*) *Reg.* v. *Stock*, 3 N. & P. 420; *Rex* v. *Maugan* (*Inhabitants*), ib. 502; *Hull* v. *Halliday*, 11 Mod. 207.

(*c*) *Fulmerston* v. *Steward*, Plowd. 105, 65, 410.

(*d*) *Puckle* v. *Moor*, 1 Ventr. 191; *Stile* v. *Finch*, Cro. Car. 381.

(*e*) *Shortridge* v. *Lampleigh*, 2 Ld. Raym. 798; 7 Mod. 71.

(*f*) *Weddall* v. *Jocar*, 10 Mod. 304; ib. 267; Salk. 520.

(*g*) *Doe* v. *Smith and others*, 7 Price, 281.

(*h*) *Read* v. *Potter*, Cro. Jac. 140.

(*i*) Br. Pleader, pl. 164; *Newys* v. *Lark*, Plowd. 410; *Jones* v. *Axen*, 1 Ld. Raym. 120.

STATUTES

OF

LIMITATION.

3 Edw. 1, c. 4.

"What shall be adjudged wreck of the sea, and what not."

S. 1.—Concerning wrecks of the sea it is agreed that where a man, a dog, or a cat escape quick out of the ship, that such ship nor barge, nor any thing within them, shall be adjudged wreck, but the goods shall be saved and kept by view of the sheriff, coroner, or the King's bailiff, and delivered into the hands of such as are of the town where the goods were found, so that if any sue for those goods, and after prove that they were his, or perished in his keeping, within a year and a day, they shall be restored (*a*) to him without delay, and if not they shall remain to the King.

13 Edw. 1, c. 5 (Westminster 2d).

"Remedies to redress usurpations of advowsons of churches."

S. 2.—From henceforth one form of pleading shall be observed among justices in writs of *darrein presentment* and *quare impedit*, in this respect, if the defendant alledgeth plenarty of the church of his own

The defendant pleadeth plenarty of his own presentation.

(*a*) Infants, femes coverts, parties in prison, and beyond seas, are bound by this non-claim; *Constable's case*, 5 Rep. 108 a; 1 And. 86.

presentation, the plea shall not fail by reason of the plenarty; so that the writ(*b*) be purchased(*c*) within six months, (*d*) though he cannot recover his presentation within the six months. (*e*)

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24 HEN. 8, c. 12.

"*For the restraint of appeals.*" (*f*)

Before whom and in what Courts appeals shall be sued within this realm.

S. 6.—And in likewise if it be commenced before the bishop diocesan, or his commissary, from the bishop diocesan, or his commissary, within fifteen days next ensuing the judgment or sentence thereof there given, to the archbishop of the province of Canterbury, if it be within his province; and if it be within the province of York, then to the archbishop of York; and so likewise to all other archbishops in other the King's dominions, as the case by order of justice shall require.

(*b*) As to the calling of the writ *quare impedit* instead of *quod permittat*, the fact was, that there was formerly a writ of *quare impedit*, now out of use; and the writ *quod permittat* is now erroneously called by the name of *quare impedit*; Brac. 246; *The King* v. *The Bishop of Meath and others*, 10 Mod. 308; *Harrington* (*Earl*) v. *Litchfield* (*Bishop*), 4 Bing. N. C. 77; 7 Scott, 371.

(*c*) *i. e.* issued.

(*d*) This is intended half a year, according to the days of the year, which contains in the whole 365 days, and, being divided, the half year is 182 days, that time the patron being the person chiefly regarded in law hath to make presentation. The ordinary cannot collate until the half year be ended; and the metropolitan cannot present after the avoidance of the church until the year fully ended. *The Bishop of Peterborough* v. *Catesby*, Cro. Jac. 166.

(*e*) If the demandant is nonsuit after appearance, it is peremptory and a bar against every other writ; so if on title made, the writ is discontinued; but it is not so if the writ is abated for a misnomer in the writ, for it may be the fault of the clerk in writing it; *Sir Hugh Portman's case*, 7 Rep. 27 *b*; Co. Entr. 481, pl. 4; *Berkely* v. *Hansard*, 2 Salk. 559.

(*f*) *Philips* v. *Bury*, 4 Mod. 106; *Coveney's case*, 2 Dy. 209 a; *Savill and wife* v. *Kirby*, 10 Mod. 385.

S. 7.—And if the matter or contention for any of the causes aforesaid be or shall be commenced, by any of the King's subjects or resiants, before the archdeacon of any archbishop, or his commissary, then the party grieved shall or may take his appeal within 15 days next after judgment, or sentence there given, to the Court of Arches, or audience, to the same archbishop or archbishops.

Appeals ought to be within 15 days.

23 Eliz. c. 1.

"*An act to retain the Queen's Majesty's subjects in their due obedience.*"

S. 8.—All and every the offences against this act, or against the acts of the first, fifth, or thirteenth of her Majesty's reign, touching acknowledging of her Majesty's supream government in causes ecclesiastical, or other matters touching the service of God, or coming to church or establishment of true religion in this realm, shall and may be inquirable, as well before justices of peace as other justices named in the same statutes, within one year and a day after every such offence committed. (*g*)

What justices may inquire of offences against the statute of 1 Eliz. c. 1; 5 Eliz. c. 1; 13 Eliz. c. 2.

31 Eliz. c. 5.

"*An act concerning informers.*"

S. 5.—All actions, suits, bills, indictments, or informations, which after twenty days next after the end of this session of parliament shall be had, brought, sued, or exhibited, (*h*) for any forfeiture upon any statute

Within what times suits upon penal statutes shall be pursued.

(*g*) *Lionel Farrington's case*, Cro. Car. 10; 1 East, P. C. 18.

(*h*) The acts of parliament do not define what shall be the "commencement of the action," it is therefore for the Courts of law to determine what act of the party commences the suit, and after the limited time forbids the act to be done; *Johnson, assignee, &c.* v. *Smith*, Burr. 959.—The moment the time limited expires the prohibition attaches, for the legislature says he shall not sue "after that time;" and the act done by the party in commencing his action within the

penal(*i*) made or to be made; whereby the forfeiture is or shall be limited to the Queen, her heirs or successors only, shall be had, brought, sued, or exhibited within two years next after the offence committed, or to be committed against such act penal, and not after two years; and that all actions, suits, bills, or informations which, after the said twenty days shall be had, brought, sued or commenced for any forfeiture, upon any penal statute, made or to be made, except the statute of tillage, the benefit and suit whereof is or shall be by the said statute limited to the Queen, her heirs or successors, and to any other which shall prosecute in that behalf, shall be had, brought, sued or commenced by any person that may lawfully pursue for the same as aforesaid,(*j*) within one year next after the offence committed, or to be committed against the said statute; (*k*) and in default of such pursuit, that then the same shall be had, sued, exhibited, or brought(*l*) for the Queen's Majesty,(*m*) her heirs or successors, at any time within

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limited time, is in the nature of a condition precedent to entitle him to maintain his action.

(*i*) A statute which gives accumulative damages to the party grieved is not a penal one; *Woodgate* v. *Knatchbull*, 2 T. R. 154.

(*j*) Immediately on commencing the suit the penalty vests in the informer. *Grosset* v. *Ogilvie* (in error), 5 Bro. P. C. 75.

(*k*) As by these provisions the action is required to be commenced within this limited time; it is the duty of the plaintiff to show that he has done so, or he will fail in his suit; for in penal actions the duty, or right of action, attaches in the plaintiff merely by bringing the action; 2 Saund. 63*a*, note 6.

(*l*) The commencement of a suit by information, by the attorney general on the part of the crown, for the recovery of forfeitures under a penal act, is, with reference to the statute of limitations, the issuing of process, and not the actual filing of the information; *Attorney-General* v. *Hall*, 11 Price, 760.

(*m*) Where an act creates a penalty, and gives one half to an informer and one half to the Queen, she may, if no informer has sued, proceed for the whole penalty; *Rex* v. *Hyman*, 7 T. R. 536.

two years, after that year ended, and if any action, suit, bill, indictment or information for any offence against any penal statute made or to be made, except the statute of tillage, shall be brought after the time in that behalf before limited, that then the same shall be void and of none effect.

Actions, informations, &c. limited by some statutes to be sued within a shorter time.

S. 6.—Provided always, that when any action, information, indictment or other suit, is or shall be limited by any statute penal, to be had, sued, commenced or brought within shorter time than is afore rehearsed; that in every such case the action, information, indictment, or other suit, shall be brought within the time limited by such estatute. (*n*)

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43 Eliz. c. 5.

"*An Act to prevent Perjury, and subornation of Perjury, and unnecessary Expenses in Suits of Law.*"

At what time a writ to remove a suit depending in an inferior court shall be delivered to the judge or officer of the same court.

S. 2.—No writ or writs of *habeas corpus*, or any other writ or writs sued forth or to be sued forth by any person or persons whatsoever, out of any of her Majesty's Courts of Record at Westminster, to remove any action, suit, plaint, or cause, depending or to be depending, in any court or courts, within any city or town corporate, or elsewhere, which have or shall have jurisdiction, power or authority to hold plea in any action, plaint or suit, shall be received or allowed by the judge or judges, or officer or officers of the court or courts wherein or to whom any such writ or writs shall be delivered, (but that he and they shall and may proceed in the said cause and causes ready to be tried, as though no such writ or writs were sued forth or delivered to him or them) except that the said writ or writs be delivered to the judge or judges, officer or officers of the said court, before that the jury which is to try the cause

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(*n*) By 21 Jac. 1, c. 4, s. 4, the statute of limitations as to penal actions can be given in evidence under *nil debet*, *e. g.* in an action of debt for penalties for not setting out tithes under 2 & 3 Edw. 6, c. 13, and the new rules as to pleading do not affect this provision; *Spencer* (Earl) v. *Swannell*, 3 M. & W. 154; 6 Dowl. 326.

in question between the party or parties plaintiffs, and the party or parties that sued forth the said writ or writs, or for whose benefit the said writ or writs is or shall be sued forth, have appeared, and one of the said jury sworn to try the said cause.

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21 Jac. 1, c. 14.

"*An Act to admit the subject to plead the general issue in informations of Intrusions brought on the behalf of the King's Majesty, and retain his possession till trial.*"

In informations of intrusion, the subject is allowed to plead the general issue, and to retain possession till trial.

Whensoever the King, his heirs or successors, and such from or under whom the King claimeth, and all others claiming under the same title under which the King claimeth, hath been and shall be out of possession by the space of 20 years, or hath not, or shall not have taken the profits of any lands, tenements or hereditaments, (*o*) within the space of 20 years, before any information of intrusion brought or to be brought, to recover the same; that in every such case the defendant or defendants may plead the general issue, if he or they so think fit: and shall not be pressed to plead specially; and that in such cases the defendant or defendants shall retain the possession he or they had at the time of such information exhibited, until the title be tried, found, or adjudged for the King.

S. 2.—Where an information of intrusion may fitly and aptly be brought on the King's behalf, that no *scire*(*p*) *facias* shall be brought, whereunto the subject shall be forced to a special pleading, and be deprived of the grace intended by this act.

(*o*) The title of the crown to lands of which it has been out of possession for twenty years, may be tried on the information of intrusion itself; and need not be first found by inquisition of office, the only effect of this statute is, to throw the *onus* of proving the title, in the first instance, on the crown; *Attorney-General* v. *Parsons*, 2 M. & W. 23.

(*p*) This can only be on some record; *Attorney-General* v. *Sewell*, 4 M. & W. 77; 6 Dowl. 673; 8 C. & P. 376.

21 Jac. 1, c. 16.

"*An Act for Limitations of Actions, and for avoiding of Suits in Law.*"

The limitation of certain personal actions.

S. 3. All actions of trespass *quare clausum fregit*, (*q*) all actions of trespass, (*r*) detinue, (*s*) action sur trover, (*t*) and replevin for taking away of goods and cattle, (*u*) all actions of account, (*x*) and upon the case (*y*), other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, (*z*) all actions of debt grounded (*a*) upon any lending or contract without (*b*) specialty; all actions of debt for arrearages of rent, (*c*) and all actions of assault, (*d*) menace, battery, (*e*) wounding, (*f*) and imprisonment, (*g*) or any of them which shall be sued or brought at any time after the end of this present session of parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after, (*h*) that is to say, the said actions upon the case (*i*) (other than for slander)

(*q*) Runnington on Ejectment, 442, 444.

(*r*) Means "*vi et armis*," Co. Litt. 161 *b*.

(*s*) Hutt. 109; *Reeves* v. *Capper*, 2 Jurist, 1067 (C.P.)

(*t*) *Pyne* v. *Dor*, 1 T. R. 55.

(*u*) *Oxley* v. *Watts*, 1 T. R. 12.

(*x*) Paley's Principal and Agent, 45.

(*y*) This includes "on promises," and "case" against the sheriff for an escape; *Bonafous* v. *Walker*, 2 T. R. 129.

(*z*) Bull. Ni. Pri. 149; *Barber* v. *Barber*, 18 Ves. jun. 286.

(*a*) *Steward* v. *Bridger*, 2 Vern. 516; *Leigh and wife* v. *Thornton*, 1 B. & A. 625.

(*b*) Not arising on a deed, Hutt. 109.

(*c*) *Hodsden* v. *Harridge*, 1 Sid. 415; 1 Lev. 273.

(*d*) 11 Mod. 180, 181.

(*e*) *Scott* v. *Shepherd*, 2 W. Bla. 892; 3 Wils. 403.

(*f*) *Rafael* v. *Verelst*, 2 W. Bla. 983.

(*g*) *Aldridge* v. *Duke*, 3 Mod, 110; 3 Keb. 613.

(*h*) The statute runs over all mesne acts, *Gray* v. *Mendez*, 1 Stra. 555; *Doe* v. *Jones*, 4 T. R. 300; id. 306, note.

(*i*) This includes trover, *Swayn* v. *Stephens*, Cro. Car. 245, 333; and slander for words actionable only for the special damage, *Burry* v. *Perry*, 2 Ld. Raym. 1588; 1 Salk. 206.

and the said actions for account, and the said actions for trespass, debt, detinue, and replevin for goods or cattle, and the said action of trespass *quare clausum fregit*, within three years next after the end of this present session of parliament; or within six years next after the cause (*k*) of such actions or suit, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment or any of them, within one year next after the end of this present session of parliament; or within four years (*l*) next after the cause of such actions or suit, and not after; and the said actions upon the case for words, within one year after the end of this present session of parliament, or within two years next after the words spoken, (*m*) and not after. (*n*)

Their limitation after judgment or outlawry reversed.

S. 4. If in any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, (*o*) or a verdict pass for the plaintiff, and upon matter alledged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ, or bill; (*p*) or if any of the said actions shall be brought by original, and the defendant therein be

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(*k*) *Magrave* v. *Gilborizne*, 1 Irish T. R. 135; *Wilchkin*, in error, against *Gahan*, ib. 591; *Godin* v. *Ferris*, 2 H. Bla. 14; as in trover, from the time of conversion, either actual, *Swain* v. *Stephens*, Cro. Car. 333; or presumed, when a demand and refusal is proved; *Wortley Montague* v. *Sandwich*, 7 Mod. 99; 1 Camp. 439. It means a right to prosecute an action with effect; *Joliffe* v. *Pitt*, 2 Vern. 694; *Murray* v. *East India Company*, 5 B. & A. 204.

(*l*) This will be included in an informal plea as to six years, unless specially demurred to, *Macfadzen* v. *Olivant*, 6 East, 389.

(*m*) These provisions affect the remedy only, *Williams* v. *Jones*, 13 East, 450, by the subject; and cannot be pleaded to process at the suit of the crown; provided the statute had not ran upon the debt before it was seized by the prerogative process; *Lambert* v. *Tayler*, 4 B. & C. 138; 6 D. & R. 188.

(*n*) These words are of peculiar force as to restriction of time, 10 Edw. 4—7; *Benyon* v. *Evelyn*, Orl. Bridg. 363.

(*o*) *Bleasdale* v. *Darby*, 9 Price, 606; 3 T. R. 78.

(*p*) *Newball* v. *Adams*, 8 Taunt. 335.

outlawed, and shall after reverse the outlawry,(q) that in all such cases the party plaintiff, his heirs, executors or administrators, as the case shall require, may commence a new action(r) or suit(s) from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not after.(t)

Infants, femes covert, &c. excepted.

S. 7.—If any person or persons that is or shall be entituled to any such(u) action of trespass, detinue, action sur trover, replevin, actions of accounts, actions of debts, actions of trespass for assault, menace, battery, wounding, or imprisonment, actions upon the case for words, be or shall be at the time of any such cause of action given or accrued, fallen or come,(x) within the age of twenty-one years,(y) feme covert, (z) *non compos mentis*, (a) imprisoned, (b) or beyond the seas; (c) that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming or being of full age, discovert, of sane memory, at large, and returned

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(q) *Sir T. Finch* v. *Lamb*, Cro. Car. 294; Sir W. Jones, 312; *Whitwick* v. *Hovenden*, 3 Lev. 245.

(r) 2 Saund. 63 *g*, 63 *h*.

(s) As by plaint in an inferior court.

(t) Where, by the death of either of the parties, the progress of the action is abated, a new action will lie within a year; *Wilcocks* v. *Huggins*, 2 Stra. 907; Fitzg. 170, 289.

(u) This includes all actions "on the case;" *Chandler* v. *Vilett*, 2 Saund. 120; so "on promises," *Crozier* v. *Tomlinson*, 2 Mod. 71.

(x) *Fenton* v. *Emblers*, 1 W. Bla. 354.

(y) *Prideaux* v. *Webber*, 1 Lev. 31; a statement in a will as to the date of a person's birth is *primâ facie* evidence of his age; *Vulliamy* v. *Huskisson*, 3 You. & Col. 80.

(z) *M'Carthy* v. *Decaies*, 2 Russ. & Myl. 614.

(a) *Steel* v. *Calley*, 1 Kee. 620; *In re J. B.* 1 Myl. & Cr. 538.

(b) *Yapp* v. *Harrington*, 3 Bing, N. C. 907; 6 Dowl. 55.

(c) The rule is, that the statute begins to run so soon as there is in existence, in England, a plaintiff capable of suing; *Rhodes* v. *Smethurst*, 4 M. & W. 42.

from beyond the seas, as other persons, having no such impediment (*d*) should have done. (*e*)

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21 Jac. 1, c. 23.

"*An Act for avoiding vexatious delays caused by removing Actions and suits out of inferior Courts.*"

No writ to remove a suit commenced in an inferior Court shall be obeyed, unless it be delivered unto the steward, &c. of the same Court before issue or demurrer joined.

S. 2.—No writ or writs of *habeas corpus*, *certiorari*, or any other writ or writs, process or processes whatsoever, other than writs of error or attaint, to be sued forth after the end of this present session of parliament by any person or persons whatsoever, out of or from any of his Majesty's Courts at Westminster or the Court of Great Sessions in Wales, or out of any other Court or Courts having or pretending to have power to award such writs or processes, or stay or remove any action, bill, plaint, suit, or cause brought, commenced or depending, or hereafter to be brought, commenced or depending, in any Court or Courts of record within any city, liberty, town corporate or elsewhere, which have or shall have jurisdiction, power or authority to hold plea in that action, bill, plaint, suit or cause: The same cause of action, bill, plaint or suit arising or growing within the said city, liberty, town corporate or jurisdiction, shall after the end of this present session of parliament be received or allowed by the steward or stewards, judge or judges, or officer or officers of the

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(*d*) *Perry and others* v. *Jackson*, 4 T. R. 517. The party is not bound to take advantage of this saving, for he may bring his action at once; *Chandler* v. *Vilett*, 2 Saund. 121; *Stowel* v. *Zouch*, Plowd. 366; *Cotton's case*, 1 Leon. 215; 2 Inst. 519 (S. C.); *Freake* v. *Cranefeldt*, 3 Myl. & Cr. 499; 9 Jurist, 1080; and a third party cannot avail himself of it; *Mavor* v. *Pyne*, 11 J. B. Moore, 6.

(*e*) But it will not be an answer, that after the statute began to run, the debtor died, and that by reason of litigation, as to right of probate, an executor was not appointed until after the six years, and the action was within a reasonable time afterwards; *Rhodes* v. *Smethurst*, 4 M. & W. 42; *Doe* v. *Jones*, 4 T. R. 300; *Doe* v. *Jesson*, 6 East, 80.

Court or Courts wherein or to whom any such writ or writs shall be directed and delivered; (*f*) but that he and they shall and may proceed in the said cause or causes as though no such writ or writs were sued forth or delivered to him or them, except that the said writ or writs be delivered to the steward or stewards, judge or judges, officer or officers of the said Court, before issue (*g*) or demurrer joined in the said cause or causes so depending or to be depending in any such Court of record in any city, liberty, town corporate or elsewhere, having power to hold such plea, so as the said issue or demurrer be not joined within six weeks next after the arrest or appearance of the defendant or defendants to such action or suit commenced.

This act shall only extend to Courts in liberties, &c. and when the steward is an utter barrister. (*h*)

S. 6.—That this act shall extend only to such Courts of record in cities, liberties, towns corporate and elsewhere, and for so long time only, as there is or shall be an utter barrister of three years standing at the bar of one of the four inns of court, that is or shall be steward, under-steward, or deputy steward, town clerk or judge or recorder of the same inferior Court, or that is or shall be from time to time assistant to such judge or judges of such inferior Courts as shall not be utter barristers of such standing as is aforesaid, and there present, in which such actions, bills, plaints, suits or causes is or shall be brought, commenced or depending, and not of counsel in any action, suit or cause then depending in the same inferior Court; any thing in this present act, or any law or other statute, usage, custom, or restraint, to the contrary in any wise notwithstanding.

This Act shall not extend to any foreign plea.

S. 7.—Provided that this act, or any thing therein contained, shall not extend to any action, bill, plaint, suit or cause, wherein any such foreign or other plea shall be pleaded as could not be tried or determined within the jurisdiction of such inferior Courts.

(*f*) An inferior Court cannot receive a certiorari for the removal of a cause there, after the time limited by this section; *Laverack* v. *Bill*, 6 Dowl. 111; 3 M. & W. 62, reported as *Laverack* v. *Bean*.

(*g*) *Bruce* v. *Wait*, 3 M. & W. 21.

(*h*) *Clapham's* case, Cro. Car. 79.

4 & 5 Will. 3, c. 18.

"*An Act to prevent malicious Informations in the Court of King's Bench, and for the more easy reversal of Outlawries in the same Court.*"

Memorandum to be filed. Defendant shall have costs, if cause not tried within one year after issue joined, &c.

S. 2.—In case any person or persons against whom any information or informations for the causes aforesaid, or any of them, shall be exhibited, shall appear thereunto, and plead to issue, and that the prosecutor or prosecutors of such information or informations shall not, at his and their own proper costs and charges, within one whole year next after issue joined therein, procure the same to be tried; or if upon such trial a verdict pass for the defendant or defendants, or in case the said informer or informers procure a *noli prosequi* to be entred; then in any of the said cases, the said Court of King's Bench is hereby authorised to award to the said defendant and defendants his, her, or their costs, unless the judge before whom such information shall be tried, shall at the trial of such information, in open Court, certify upon record, that there was a reasonable cause for exhibiting such information; and in case the said informer or informers shall not within three months next after the said costs taxed, and demand made thereof, pay to the said defendant or defendants the said costs, then the said defendant and defendants shall have the benefit of the said recognizance, to compel them thereunto.

7 Will. 3, c. 3.

"*An Act for regulating of Trials in cases of Treason and misprision of Treason.*"

No person to be indicted for treason, unless within three years after offence.

S. 5.—No person or persons whatsoever shall be indicted, tried, or prosecuted for any such treason as aforesaid, or for misprision of such treason, that shall be committed or done within the kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, after the said five and twentieth day of March in the year of our Lord one thousand six hundred and ninety-six, unless the same indictment be found by a grand

jury within three years next after the treason or offence done or committed.

S. 6.—Always provided and excepted, that if any person or persons whatsoever shall be guilty of designing, endeavouring, or attempting, any assassination on the body of the king, by poison or otherwise, such person or persons may be prosecuted at any time, notwithstanding the aforesaid limitation. Exception.

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7 & 8 Will. 3, c. 6.

"*An Act for the more easy recovery of small Tithes.*"

S. 6.—No complaint for or concerning any small tithes, offerings, oblations, obventions or compositions hereafter due, shall be heard and determined by any justices of the peace, by virtue of this Act, unless the complaint shall be made within the space of two years next after the times that the same tithes, oblations, obventions, and compositions did become due or payable. No complaint to be heard unless made within two years.

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8 & 9 Will. 3, c. 26.

"*An Act for the better preventing the counterfeiting the current Coin of this Kingdom.*"

S. 9.—No prosecution shall be made for any offence against this Act, unless such prosecution be commenced (*i*) within three months after such offence committed. Prosecution to be in three months.

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10 & 11 Will. 3, c. 14.

"*An Act for limiting certain times, within which Writs of Error shall be brought for the reversing Fines, Common Recoveries, and Antient Judgments.*"

S. 1.—No fine or common recovery, nor any judgment in any real or personal action, shall from and after the No fine or recovery, &c. shall be re-

(*i*) *Rex* v. *Phillips*, Russ. & Ry. C. C. 369; but an information before a justice, though his committal is informal, will be sufficient; 1 East, P. C. 186.

versed, unless writ of error be brought in twenty years after fine levied, &c.

first day of May, one thousand six hundred and ninety-nine, be reversed or avoided, for any error or defect therein, unless the writ of error or suit for the reversing such fine, recovery or judgment, be commenced, or brought and prosecuted with effect, within twenty years after such fine levied, or such recovery suffered, or judgment signed or entred of record.

Proviso.

S. 2.—If any person who is or shall be intituled to any such writ of error as aforesaid, shall, at the time of such title accrued, be within the age of twenty-one years, or covert, *non compos mentis*, imprisoned, or beyond the seas, that then such person, his or her heirs, executors, or administrators (notwithstanding the said twenty years expired), shall and may bring his, her or their writ of error for the reversing any such fine, recovery or judgment, as he, she or they might have done, in case this act had not been made, so as the same be done within five years after his or her full age, discoverture, coming of sound mind, enlargement out of prison, or returning from beyond the seas, or death, but not afterwards, or otherwise.

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3 & 4 Anne, c. 9.

"*An Act for giving like remedy upon Promissory Notes,* (*k*) *as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.*"

How action shall be brought. 21 Jac. 1, c. 16.

S. 2.—All and every such actions shall be commenced, sued and brought within such time (*l*) as is appointed for commencing or suing actions upon the case, by the statute made in the one and twentieth year of the reign of King James the First, intituled "*An Act for limitation of Actions and for avoiding of suits in Law.*"(*m*)

(*k*) *Buller* v. *Crips*, 6 Mod. 30, n.; 1 Saund. 210 *a*, n. (*a*).

(*l*) Where the note is payable on demand, the statute runs from the making; *Christie* v. *Fonsick*, MS., 1 Selw. N. P. 137; and when payable at sight, then from the time of presentment; *Holmes* v. *Kerrison*, 2 Taunt. 323.

(*m*) Page 105.

4 Anne, c. 16.

"An Act for the amendment of the law, and the better advancement of justice."

S. 17.—All suits and actions in the Court of Admiralty for seamen's wages, which shall be become due after the said first day of Trinity term, shall be commenced and sued within six years next after the cause of such suits or actions shall accrue, and not after. (*n*)

Seamen's wages.

S. 18.—If any person or persons, who is or shall be intitled to any such suit or action for seamen's wages, be or shall be, at the time of any such cause of suit or action accrued, fallen or come, within the age of twenty-one years, feme covert, *non compos mentis*, imprisoned, or beyond the seas, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within six years next after their coming to, or being of full age, discovert, of sane memory, at large, and returned from beyond the seas.

Proviso in case of nonage, feme covert or non compos mentis, &c.

S. 19. If any person or persons against whom there is or shall be any such cause of suit or action for seamen's wages, or against whom there shall be any cause of action of trespass, detinue, actions sur trover, or replevin for taking away goods or cattle, or of action of account or upon the case, or of debt grounded upon any lending or contract without specialty, of debt for arrearages of rent, or assault, menace, battery, wounding and imprisonment, or any of them, (*o*) be or shall be, at the time of any such cause of suit or action given or accrued, fallen, or come beyond the seas; (*p*) that then

Action against persons gone beyond the seas may be brought after their return.

(*n*) The proper mode of pleading to the libel here is, "to allege directly that no suit has been brought within six years after the cause of action accrued;" *Ewers* v. *Jones*, 3 Salk. 228; 2 Ld Raym. 934; 1 Com. 137.

(*o*) Page 105.

(*p*) This exception applies to foreigners residing abroad; *Stethorst* v. *Graeme*, 2 W. Bla. 723, at the time when the cause of action arises, *Sir Thomas Cotton's* case, 27 Eliz. Shepp. Touch. 31—34. This Act is not expressly referred to in 3 & 4 Will. 4, c. 27, s. 7.; the Act there mentioned is that of 21 Jac. 1, c. 16; but as this Act refers to the former, and tends merely to extend its provisions, it would

such person or persons, who is or shall be entitled to any such suit or action, shall be at liberty to bring the said actions against such person and persons, after their return (*q*) from beyond the seas, so as they take the same after their return from beyond the seas, within such times as are respectively limited for the bringing of the said actions before by this Act, and by the said other Act made in the one and twentieth year of the reign of King James the First. (*r*)

7 Anne, c. 25.

"*An Act for making perpetual an Act for the better preventing the counterfeiting the current coin of this kingdom, &c.*"

The prosecution of offences against 8 Will. 3, c. 26, may be commenced in 6 months after the offence,

S. 2.—The prosecution of such person or persons as offend against the said Act, by making or mending, or beginning or proceeding to make or mend any coining tool or instrument therein prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within six months after such offence.

8 Anne, c. 14.

"*An Act for the better security of rents, and to prevent frauds committed by tenants.*"

Rent in arrear upon a lease for life,

S. 6.—And whereas tenants *pur auter vie*, and lessees for years, (*s*) or at will, (*t*) frequently hold over the

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seem to be equally within the meaning of the above cited clause of explanation.

(*q*) The word "return" must be read in its well known and popular sense, and therefore the mere touching at a sea port here during a voyage is not within the meaning of this section; *Gregory* v. *Hurrill*, 8 J. B. Moore, 189; 1 Bing. 324.

(*r*) c. 16. s. 3.

(*s*) It must be certain in commencement and ending, and includes an estate for a quarter of a year or less; 1 Inst. 45 *b*; 2 Bla. Com. 140.

(*t*) This is not a certain estate, but if the will is deter-

tenements to them demised, after the determination of such leases: and whereas after the determination of such, or any other leases, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof; It is hereby further enacted by the authority aforesaid, that from and after the said first day of May one thousand seven hundred and ten, it shall and may be lawful, for any person or persons, having any rent in arrear or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as they might have done, if such lease or leases had not been ended or determined.

&c. expired may be distrained for after the determination of the lease.

S. 7.—That such distress be made within six kalendar months after the determination (*u*) of such lease, and during the continuance of such landlord's title or interest, and during the possession (*x*) of the tenant from whom such arrears became due.

Distress to be within six months after the end of the lease, and during the landlord's title and tenant's possession.

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9 Anne, c. 14.

"*An Act for the better preventing of excessive and deceitful gaming.*"

S. 2.—Any person or persons whatsoever, who shall at any time or sitting, by playing at cards, dice, tables (*y*) or other game or games whatsoever, or by betting on the sides or hands of such as do play at any

The loser of 10*l.* at cards, &c. may sue for the money within three months.

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mined by the lessor, the lessee has a right to the corn sown and other emblements; *Oland's case*, 5 Rep. 116.

(*u*) Where by the custom of the country the tenant is entitled to leave his away going crop in the barns, &c. of the farm for a certain time, after the lease has expired, the determination arises at the end of this latter period; *Beavan* v. *Delahay and another*, 1 H. Bla. 5; *Knight* v. *Bennett*, 3 Bing. 364; 11 J. B. Moore, 227.

(*x*) Though of part only of the premises; *Nuttall* v. *Stanton*, 3 B. & C. 51; 6 D. & R. 155.

(*y*) As hazard, and whether played in private or at a public gaming table; *M'Kinnell* v. *Robinson*, 3 M. & W. 434; 2 Jurist, 595.

of the games aforesaid, lose to any one or more person or persons so playing or betting in the whole, the sum or value of ten pounds, and shall pay or deliver the same or any part thereof, the person or persons so losing or paying or delivering the same, shall be at liberty within three months then next, to sue for and recover the money or goods so lost, and paid or delivered or any part thereof, from the respective winner and winners thereof, with costs of suit, by action of debt founded on this Act, to be prosecuted in any of her Majesty's Courts of Record.

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11 Geo. 2, c. 19.

"*An Act for the more effectual securing the payment of rents, and preventing frauds by tenants.*"

Landlords may distrain and sell goods fraudulently carried off the premises within thirty days.

S. 1.—In case any tenant or tenants, lessee or lessees, for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off from such premisses, his, her or their goods or chattles, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable; it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within that part of Great Britain called England, dominion of Wales, or the town of Berwick-upon-Tweed, or any person or persons by him, her, or them for that purpose lawfully impowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent.

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24 Geo. 2, c. 44.

"*An Act for the rendering justices of the peace more safe in the execution of their office; and for indemnifying constables and others acting in obedience to their warrants.*"

Limitation of actions.

S. 8.—Provided also and be it enacted, by the authority aforesaid, that no action shall be brought against any justice of the peace for anything done in the execution of his office, or against any constable, headborough, or other officer, or person acting as aforesaid, unless commenced within six calendar months after the act committed.

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9 Geo. 3, c. 16.

"*An Act to amend and render more Effectual an Act made in the Twenty first Year of the Reign of King James the First, intituled,* 'An Act for the general quiet of the Subjects against all pretences of Concealment whatsoever." (z)

The crown disabled to sue or implead any person for any manors, lands, hereditaments, &c. where the right hath

S. 1.—The King's majesty, his heirs, or successors, shall not at any time hereafter, sue, impeach, question, or implead, any person or persons, bodies politick or corporate, for or in anywise concerning any manors, lands, tenements, rents, tythes, or hereditaments whatsoever, other than liberties or franchises,(a) or for or in anywise concerning the revenues, issues, or profits thereof, or make

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(z) The Statute of Limitations, 21 Jac. 1, c. 16, may be pleaded to a *scire facias* issued by the crown against the drawer of a bill of exchange which was barred in the hands of the crown debtor, upon the ground that the crown is only entitled to its debtor's right, and cannot create, or reserve right, if none existed, or it has become barred; and as the crown debtor could not have recovered if the statute had been pleaded; so neither can the crown standing in the same situation as its debtor; *Rex* v. *Morrall*, 6 Price, 24.

(a) This act does not apply to a reversion in the crown where the prior estate has been granted by it, and by its gift and provision for services; and which therefore cannot be barred by the subject, 34 Hen. 8, c. 20, s. 2; *Perkins* v. *Sewell*, 1 W. Bla. 654.

not or shall not first accrue and grow within sixty years next before the commencing such suit, &c.

any title, claim, challenge, or demand, of, in, or to the same, or any of them, by reason of any right or title which hath not first accrued and grown, or which shall not hereafter first accrue or grow, within the space of sixty years next before the filing, issuing, or commencing, of every such action, bill, plaint, information, commission, or other suit or proceeding, as shall at any time or times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof, unless his majesty or some of his progenitors, predecessors, or ancestors, heirs, or successors, or some other person or persons, bodies politick or corporate, under whom his Majesty, his heirs, or successors, anything hath or lawfully claimeth, or shall have or lawfully claim, have or shall have been answered by force and virtue of any such right or title to the same, the rents, revenues, issues, or profits thereof, or the rents, issues, or profits of any honour, manor, or other hereditament, whereof the premises in question shall be part or parcel, within the said space of sixty years; or that the same have or shall have been duly in charge to his Majesty, or some of his progenitors, predecessors, or ancestors, heirs, or successors, or have or shall have stood *insuper* of record within the said space of sixty years: And that all and every person or persons, bodies politick and corporate, their heirs and successors, and all claiming by, from, or under them, or any of them, for and according to their ~~and~~ every of their several estates and interests which they have, or claim to have, or shall or may have or claim to have, in the same respectively, shall, at all times hereafter, quietly and freely have, hold, and enjoy, against his Majesty, his heirs and successors, claiming by any title which hath not first accrued or grown, or which shall not hereafter first accrue or grow, within the said space of sixty years, all and singular manors, lands, tenements, rents, tythes, and hereditaments whatsoever, (except liberties and franchises) which he or they, or his or their, or any of their ancestors or predecessors, or those from, by, or under whom they do or shall claim, have or shall have held or enjoyed, or taken the rents, revenues, issues, or profits thereof, by the space of sixty years next before the filing, issuing, or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding as

And the subject secured in the free and quiet enjoyment thereof, as well against the crown, &c.

shall at any time or times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof; unless his Majesty, or some of his progenitors, predecessors, or ancestors, heirs, or successors, or some other person or persons, bodies politick or corporate, by, from, or under whom his Majesty, his heirs, or successors, anything hath or lawfully claimeth, or shall have or lawfully claim, in the said manors, lands, tenements, rents, tythes, or hereditaments, by force of any right or title, have been or shall have been answered, by virtue of any such right or title, the rents, revenues, issues, or other profits thereof, within the said space of sixty years; or that the same have or shall have been duly in charge, or stood *insuper* of record as aforesaid, within the said space of sixty years: And furthermore that all and every person and persons, bodies politick and corporate, their heirs and successors, and all claiming or to claim by, from, or under them, or any of them, for and according to their and every of their several estates and interests which they have or claim, or shall or may have or claim, respectively, shall, for ever hereafter quietly and freely have, hold, and enjoy, all such manors, lands, tenements, rents, tythes, and hereditaments (except liberties and franchises) as they now have, claim, or enjoy, or hereafter shall or may have, claim, or enjoy, whereof his Majesty his progenitors, predecessors, or ancestors, or whereof his Majesty, his heirs, or successors, or he or they by, from, or under whom his Majesty, his heirs, or successors, anything hath or lawfully claimeth, or shall have or lawfully claim, or some of them, by force of some right or title to the same, have not or shall not have been answered, by virtue of such right or title, the rents, revenues, issues or profits thereof, within the space of sixty years next before the filing, issuing, or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding as shall at any time or times hereafter be filed, issued, or commenced for recovering the same, or in respect thereof, nor the same have been nor shall have been duly in charge, or stood *insuper* of record as aforesaid, within the said space of sixty years, against all and every person and persons their heirs and assigns, having, claiming, or pretending to have, or who shall or may have, claim, or pretend to

As against all persons claiming any estate or interest therein, by colour of any letters patent, or grants upon suggestion of concealment, wrongful detaining, &c. for which judgement hath not, or shall not be given for the crown within sixty years before the commencing such suit.

have any estate, right, title, interest, claim, or demand whatsoever, of, in, or to the same, by force or colour of any letters patent or grants, upon suggestion of concealment or wrongful detaining, or not being in charge or defective titles, or by, from, or under, any patentees or grantees, or any letters patents or grants, upon suggestion of concealment or wrongful detaining, or not being in charge, or defective titles, of or for which said manors, lands, tenements, rents, tythes, and hereditaments, or any of them, no verdict, judgement, decree, judicial order upon hearing, or sentence of any Court now standing in force, hath been had or given, or any such verdict, judgement, decree, judicial order upon hearing, or sentence of Court, shall hereafter be had or given, in any action, bill, plaint, or information, in any of his Majesty's Courts at Westminster, for or in the name of the King's Majesty, or any of his ancestors, progenitors, predecessors, heirs, or successors, or of any of the said patentees or grantees, or for their or any of their heirs, or assigns, within the space of sixty years next before the filing, issuing, or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding as shall at any time or times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof as aforesaid.

In what cases the rents and profits of manors, &c. shall be deemed to be duly in charge.

S. 2.—Where the rents, revenues, issues, or profits of any manors, lands, tenements, tythes, or hereditaments are or shall be in charge by, to, or with any auditor (*b*) or auditors, or other proper officer or officers of the revenue such rents, revenues, issues, and profits shall be

(*b*) Returns by auditors in their accounts of the crown revenue, are sufficient proof of the subject-matter having been kept in charge so as to protect the claim of the crown, from this act, even though they have returned "*nihil*," and no claim has been put in suit for sixty years; *Att. Gen.* v. *Eardley* (*Lord*), 8 Price, 39. And the same rule applies where the returns are made to the auditors for auditing the public accounts; for such returns constitute a "putting in charge," even though nothing has been received of such revenue, nor has there been any suit or proceedings for its recovery within sixty years; *Att. Gen.* v. *Maxwell*, 8 Price, 76, *n.*

held, deemed, and taken to be duly in charge within the meaning and intent of this Act, any usage or custom to the contrary notwithstanding.

Cases wherein reversions or remainders in the crown of any manor, &c. are not liable to be impeached by this Act.

S. 3.—Provided always, that this act, or any thing therein contained, shall not extend to bar, impeach, or hinder his Majesty, his heirs or successors of, for, or from any manors, tenements, rents, tythes, or hereditaments whereof any reversion or remainder now is in his Majesty, for or concerning the said reversion or remainder; nor of, for, or from any reversion or remainder, or possibility of reversion or remainder, in any of his Majesty's progenitors, or predecessors, or ancestors, which by the expiration, end, or other determination of any limited estate of fee simple or of any fee tail, or other particular estate, hath or ought to have first fallen or become in possession, or which shall or may, or ought hereafter first to fall or come in possession within the space of sixty years next before the filing, issuing, or commencing of any such action, bill, plaint, information, commission, or other suit or proceeding as shall at any time or times hereafter be filed, issued, or commenced for recovering the same or in respect thereof, nor of, for or from any right or title first accrued or grown to his Majesty, or any of his progenitors, predecessors, or ancestors, or which shall first accrue or grow to his Majesty, or any of his heirs or successors of, in, or to any manors, lands, tenements, rents, tythes, or hereditaments at any time or times within the space of sixty years next before the filing, (c) issuing, or commencing of any such action, bill, plaint, information, commission, or other suit or proceeding as shall at any time or times hereafter be filed, issued, or commenced for recovering the same, or in respect thereof, and not before.

Limitation of the act with respect to grants from the crown of any limited estate, &c.

S. 4.—Provided also and be it enacted by the authority of the present parliament, that this Act or any thing therein contained shall not extend to any manors, lands, tenements, rents, tythes, or hereditaments mentioned to be granted or conveyed by any of his Majesty's pro-

(c) The suing out process is the commencement of the information for this purpose. And the memorandum on the record is not decisive evidence of the time when the information commenced, *Att. Gen.* v. *Brown*, Forrest, 110.

genitors, predecessors, or ancestors, or by any other under whom his Majesty claimeth, to any person or persons of any limited estate in fee simple, or of any estate in tail, or other particular estate, which several estates (if the same had been good and effectual in law,) have or ought to have first fallen or become in possession, or will or ought first to fall or come in possession within the space of sixty years next before the filing, issuing, or commencing of any such action, bill, plaint, information, commission, or other suit or proceeding as shall at any time or times hereafter be filed, issued, or commenced for recovering the same, or in respect thereof as aforesaid; nor to any manors, lands, tenements, rents, tythes, or hereditaments mentioned to be granted or conveyed by any of his Majesty's progenitors, predecessors, or ancestors, or by any other under whom his Majesty claimeth, to any person or persons in fee tail, or other particular estate, whereof the reversion or inheritance (if such estate tail, or other particular estate had been good and effectual in law,) should have been and continued in his Majesty, or any of his progenitors, predecessors, or ancestors, or should or ought hereafter to be and continue in his Majesty, his heirs or successors, at any time within the space of sixty years next before the filing, issuing, or commencing of any such action, bill, plaint, information, commission, or other suit or proceeding as shall at any time or times hereafter be filed, issued or commenced for recovering the same, or in respect thereof, as aforesaid.

The said manors, &c. to be holden of the crown upon the usual tenures, services and duties.

S. 5.—Provided also, and be it enacted by the authority of this present parliament, that all and singular the said manors, lands, tenements, and hereditaments, shall at all times hereafter be holden of his Majesty, his heirs and successors, and of other person and persons, bodies politick and corporate, their heirs and successors respectively, by the same tenures, services, fee farms, chief rents, heriots, and other duties, to all intents and purposes as the same should or ought of right to have been holden if the estates, rights, and interests, established and made sure by this present act, had been before the making of this action, firm, good, and effectual in law.

Provision for the securing

S. 7.—Provided also, and be it enacted, that where

any fee farm rent, or other rent or rents, have been or shall be answered and actually paid to the King's majesty, or to any of his predecessors, heirs or successors, within the space of sixty years next before an action, bill, plaint, information, commission, or other suit or proceeding, shall at any time or times hereafter be filed, issued, or commenced for recovering the same, or in respect thereof, out of any manors, lands, tenements, or hereditaments, of which manors, lands, tenements, or hereditaments, the estates, rights, or interests, being defective, are established and made sure by this present Act that the King's majesty, his heirs and successors, shall from henceforth for ever have, hold, and enjoy the said rents and arrearages thereof in such manner and form, and as fully and amply as the same are or were enjoyed at any time within the said space of sixty years.

to the crown such fee farm or other rents, &c. as have been paid within a limited time.

S. 10.—Provided always and be it enacted by the authority of the present parliament, that no putting in charge, (*d*) nor standing *insuper*, nor taking or answering the farm rents, revenues, or profits of any of the said manors, lands, tenements, or hereditaments, by force, colour, or pretext of any letters-patent or grants of concealments, or defective titles, or of manors, lands, tenements, or hereditaments, out of charge, or by force, colour, or pretext of any inquisitions, presentments by or by reason of any commission or other authority to find out concealments, defective titles, or lands, tenements, or hereditaments out of charge, shall be deemed, construed, or taken to be a putting in charge, standing *insuper*, or taking or answering the farm rents, revenues, or profits, by or to his Majesty, or any of his progenitors or predecessors, heirs or successors, unless thereupon such manors, lands, tenements, or hereditaments, have been or shall be upon some information or suit on the behalf of his Majesty, or some of his progenitors or predecessors, heirs or successors, upon a lawful verdict given or to be given, or demurrer in law adjudged, or upon a hearing, ordered or decreed for his Majesty, or some of his progenitors or predecessors, heirs or successors, or some of them, within the space of sixty years

Provision declaring what shall or shall not be deemed a putting in charge, standing *insuper*, or taking or answering by or to the crown, &c.

(*d*) *Attorney-General* v. *Lord Eardley*, 8 Price, 73; Dan. 271; 3 E. & Y. 986; 3 Inst. 189.

next before the filing, issuing, or commencing of every such action, bill, plaint, information, commission, or other suit or proceedings, as shall at any time or times hereafter be filed, issued, or commenced for recovering the same, or in respect thereof, as aforesaid.

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32 Geo. 3, c. 58.

"An Act for the Amendment of the Law in Proceedings upon Information in nature of Quo Warranto."

Preamble.

S. 1.—Whereas it would greatly tend to secure the freedom of election, and the quiet, tranquillity and good order of cities, boroughs, and towns corporate, if a certain reasonable limitation of time should be by law established, beyond which no member or officer of any city, borough, or town corporate, should be disturbed in the enjoyment or exercise of his office or franchise which he should have held and enjoyed for such time: be it enacted, that from and after the first day of Trinity term in the year one thousand seven hundred and ninety-three, it shall and may be lawful for the defendant or defendants in any information in the nature of a *quo warranto*, for the exercise of any office or franchise in any city, borough, or town corporate, whether exhibited with leave of the Court or by his Majesty's Attorney-General, or other officer of the crown on behalf of his Majesty, by virtue of any royal prerogative or otherwise, and each and every of them severally and respectively to plead that he or they had first actually taken upon themselves or held or executed the office or franchise which is the subject of such information, six years or more before the exhibiting (*e*) of such information, such six years to be reckoned and computed from the day on which such defendant so pleading was actually admitted and sworn into such office or franchise, which plea shall and may be pleaded either singly or together, with and besides such plea as he or they might have lawfully

From the 1st day of Trinity term, 1793, defendants to informations in the nature of *quo warranto*, for the exercise of any office, may plead the holding of it six years or more, &c.

(*e*) This has been held to mean six years next before the time when the rule for the information was made absolute; *Rex* v. *Stokes*, 2 M. & S. 71.

pleaded before the passing of this Act, or such several pleas as the Court on motion shall allow.

S. 2.—Provided always, and be it enacted, that in every such case the prosecutor of such information may reply to such plea any forfeiture, or surrender, or avoidance by the defendant of such office or franchise happening within six years before the exhibition of such information, whereon the defendant may take issue.

Forfeiture of office within six years before information, may be replied to such plea.

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53 Geo. 3, c. 127.

"*An Act for the better Regulation of Ecclesiastical Courts in England, and for the more easy Recovery of Church Rates and Tithes.*"

S. 5.—No action shall be brought for the recovery of any penalty for the not setting out tithes, nor any suit instituted in any Court of equity, or in any ecclesiastical Court, to recover the value of any tithes, unless such action shall be brought or such suit commenced within six years from the time when such tithes became due. (*f*)

Limitations of actions respecting tithes.

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53 Geo. 3, c. 141.

"*An Act to repeal an Act of the Seventeenth Year of the Reign of his present Majesty, intituled 'An Act for registering the Grant of Life Annuities, and for the better Protection of Infants against such Grants, and to substitute other Provisions in lieu thereof.*" [14 July, 1813.]

S. 2.—Within thirty days after the execution of every deed, bond, instrument, or other assurance, whereby

Annuities, &c. enrolled in Chancery.

(*f*) So in equity, an account of tithes will only be decreed for six years; *Collins* v. *Archer*, 1 Russ. & Myl. 284; *Chichester* v. *Sheldon*, Turn. & Russ. 245; 3 E. & Y. 1102; *Garrard* v. *Schollar*, 3 Gwill. 1045; 2 E. & Y. 282. In Chancery it is carried down to the Master's report, but on the equity side of the Exchequer it refers only to the filing of the bill; 2 Eag. on Tithes, 372; *Carleton* v. *Brightwell*, 2 P. Wms. 462; 2 E. & Y. 7; Gwill. 676; *Archbishop of York* v. *Sir M. Stapleton*, 2 Atk. 136; 2 E. & Y. 83; Gw. 772; *Bell* v. *Read*, 3 Atk. 590; 2 E. & Y. 110; Gw. 804.

any annuity or rent charge shall, from and after the passing of this Act, be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, a memorial of the date of every such deed, bond, instrument, or other assurance, of the names of all the parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent charge shall be granted, and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations for granting the same, and the annual sum or sums to be paid, shall be enrolled in the high Court of Chancery in the form or to the effect following, with such alterations therein as the nature and circumstances of any particular case may reasonably require: (*see the schedule in the Act*), otherwise every such deed, bond, instrument, or other assurance, shall be null and void to all intents and purposes.

Proviso for Scotland or Ireland, and annuities granted by will, &c.

S. 10.—This Act shall not extend to Scotland or Ireland, nor to any annuity or rent charge given by will or marriage settlement, or for the advancement of a child, nor to any annuity or rent charge secured upon freehold or copyhold or customary lands in Great Britain or Ireland, or in any of his Majesty's possessions beyond the seas, of equal or greater annual value than the said annuity, over and above any other annuity, and the interest of any principal sum charged or secured thereon, of which the grantee had notice at the time of the grant, whereof the grantor is seised in fee simple or fee tail in possession, or the fee simple whereof in possession the grantor is enabled to charge at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity, nor to any voluntary annuity or rent charge granted without regard to pecuniary consideration or money's worth; nor to any annuity or rent charge granted by any body corporate, or under any authority or trust created by act of parliament.

9 Geo. 4, c. 14.

"*An Act for rendering a Written Memorandum necessary to the Validity of certain Promises and Engagements.*"

S. 1.—Whereas by an Act passed in England in the twenty-first year of the reign of King James the First, it was among other things enacted, that all actions (*g*) of account and upon the case, *other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants,* (*h*) all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent, should be commenced within three years after the end of the then present session of parliament, or within six years next after the cause of such actions or suit and not after; and whereas a similar enactment is contained in an Act passed in Ireland in the tenth year of the reign of King Charles the First; and whereas various questions have arisen in actions founded on simple contract, as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments, and it is expedient to prevent such questions, and to make a provision for giving effect to the said enactments and to the intention thereof. Be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that in actions of debt, or upon the case, grounded upon any

English Act, 21 Jac. 1, c. 16.

(*g*) In cases arising under these statutes, and which are unconnected with 3 & 4 Will. 4, c. 27, which regards interests in land, the remedy by action or of set off is alone affected, and the *right* remains; *Hunt* v. *Burn*, 2 Salk. 422; but if the *right* is released, then the remedy falls also.

(*h*) "It is not that defendant may not plead the statute in all cases where the account is closed and concluded between the parties, and the dealing and transaction over. It was not the meaning to hinder that, but it was to prevent dividing the account between merchants where it was a running account, when, perhaps, part might have begun long before and the account never settled; and, perhaps, there

In actions of debt or upon the case, no acknowledgment shall be deemed sufficient unless it be in writing, or by part payment.

Joint contractors.

simple contract, no acknowledgment or promise (*i*) by words only (*k*) shall be deemed sufficient evidence (*l*) of a new or continuing contract, (*m*) whereby to take any case out of the operation of the said enactments or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment (*n*) or promise shall be made or contained by or in some writing, (*o*) to be signed by the party chargeable thereby; and that where there shall be two or more joint-contractors, or executors or administrators of any contractor, no such joint-contractor, executor, or administrator shall lose the benefit of the said enactments or either of them, so as

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might have been dealings and transactions within the time of the statute."—*Per Lord Hardwicke*, C., *Welford* v. *Liddell*, 3 Ves. sen. 400: Cases within the exception do not appear to want a new or continuing contract, and therefore are not governed by 9 Geo. 4, c. 14, s. 1. Wilkinson on the Limitation of Actions, &c. 35.

(*i*) *Jones* v. *Ryder*, 4 M. & W. 32.

(*k*) The legal effect of the acknowledgment or promise, as to how far it may be considered as admitting a debt to be due or amounting to a promise to pay it, is a question of law for the determination of the Court; *Snook* v. *Mears*, 5 Price, 636, but extrinsic facts are for the jury, *Morrell* v. *Frith*, 3 M. & W. 402; 8 C. & P. 246; *Brown* v. *Brown*, 2 Jurist, 255.

(*l*) It must profess to charge the debtor in direct terms; *Whippy* v. *Hillary*, 3 B. & Ad. 399; and with the debt on its face, *Kennett* v. *Milbank*, 8 Bing. 38; and see *Martin* v. *Knowles*, 1 N. & M. 421; a conditional, *Tanner* v. *Smart*, 6 B. & C. 603; or qualified promise must be declared on as such, *Haydon* v. *Williams*, 7 Bing. 163; a promise to pay may be inferred from a general acknowledgment, *Routledge* v. *Ramsay*, 2 N. & P. 319.

(*m*) "It is now settled that a mere acknowledgment of the subsistence of the debt, unless coupled with or amounting to evidence of a promise to pay, is not sufficient to take the case out of the statute of limitations;" Per Lord Tenterden, C. J. in *Burley* v. *Scott*, 2 M. & R. 96; and made to the creditor, *Greenfell* v. *Girdlestone*, 2 You. & Col. 662.

(*n*) *Bird* v. *Gammon*, 5 Scott, 213; *St. John* v. *Browton*, 2 Jurist, 413, (V. C.)

(*o*) *Mountstephen* v. *Brooke*, 3 B. & A. 141.

to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away, or lessen the effect of any payment (*p*) of any principal or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint-contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by either of the said recited Acts, or this Act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless, be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment, or promise or otherwise, judgment may be given and costs allowed for the plaintiff, as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

Proviso for the case of joint contractors.

S. 2.—If any defendant or defendants, in any action on any simple contract, shall plead any matter in abatement to the effect that any other person or persons ought to be jointly sued and issue be joined on such plea; and it shall appear at the trial that the action could not by reason of the said recited Acts, or of this Act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the issue joined on such plea shall be found against the party pleading the same.

Pleas in abatement.

(*p*) This will suffice, if made within the limitation immediately before the action; *Bealey* v. *Greenslade*, 2 Tyr. 121; and payment by one of two or more joint debtors enures as a payment by all; *Whitcomb* v. *Whiting*, 2 Dougl. 651 *a.*; and if the debtor give as security a note of himself and another, *A.* a payment on behalf of *B.*, after the statute has begun to run, revives the debt as against *A.* also; *Ex parte Woodman* v. *Turner*, 3 M. & Ayr. 609; a written paper containing a statement of mutual accounts between a creditor and debtor, by whom it was signed, is evidence of payment, and must be pleaded as such and not by way of set-off; *Sinclair* v. *Baggeley*, 4 M. &. W. 312; 2 Jurist, 683. The words "settled, Samuel Hughes," at the foot of a bill of parcels, import a receipt and acquittance;

Indorsements of payment.

S. 3.—No indorsement or memorandum of any payment written or made after the time appointed for this Act to take effect upon any promissory note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of either of the said statutes.

Simple contract debts alleged by way of set-off.

S. 4.—That the said recited Act, and this Act, shall be deemed and taken to apply to the case of any debt on simple contract alleged by way of set-off (*q*) on the part of any defendant either by plea, notice, (*r*) or otherwise.

Memorandums exempted from stamps.

S. 8.—No memorandum (*s*) or other writing made necessary by this Act, shall be deemed to be an agreement within the meaning of any statute (*t*) relating to the duties of stamps.

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2 Will. 4, c. 39.

"*An Act for Uniformity of Process in Personal Actions in his Majesty's Courts of Law at Westminster.*"

Duration of writs.

S. 10.—No writ issued by authority of this Act shall be in force for more than four calendar months from the day of the date thereof, including the day of such date; but every writ of summons and capias may be continued by *alias* and *pluries*, as the case may require,

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Rex v. *Martin*, 7 C. & P. 549; and such a payment as is here intended may be made by a transfer of stock; *Breton* v. *Cope*, Peake, 43, 3rd edition.

(*q*) Bull. *Ni. Pri.* 180; *Remington* v. *Stevens*, 2 Stra. 1271; Selw. *Ni. Pri.* 139. Replication: it must exist at the time of plea pleaded; *Dendy* v. *Powell*, 3 M. & W. 442; 6 Dowl. 577.

(*r*) Since the new rules, Hil. 4 Will. 4. tit. Assumpsit, s. (3.) there cannot be a "notice" of set-off; 2 Stra. 1271.

(*s*) This section applies only to instruments capable of being properly stamped as agreements, and not to promissory notes; *Jones* v. *Ryder*, 4 M. & W. 32.

(*t*) 55 Geo. 3, c. 184; Sched. tit. Agreement.

if any defendant therein named may not have been arrested thereon or served therewith: Provided always, that no first writ shall be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, unless the defendant shall be arrested thereon, or served therewith, or proceedings to or toward outlawry shall be had thereupon, or unless such writ and every writ (if any) issued in continuation of a preceding writ (*u*) shall be returned *non est inventus*, (*x*) and entered of record within one calendar month next after the expiration thereof, including the day of such expiration, and unless every writ issued in continuation of a preceding writ shall be issued within one calendar month after the expiration of the preceding writ, and shall contain a memorandum indorsed thereon or subscribed thereto, specifying the day of the date of the first writ; and return to be made in bailable process by the sheriff or other officer to whom the writ shall be directed, or his successor in office, and in process not bailable, by the plaintiff or his attorney suing out the same, as the case may be.

Proviso as to Statute of Limitations.

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2 & 3 Will. 4, c. 71.

"*An Act for shortening the Time of Prescription in certain cases.*"

S. 1.—Whereas the expression, "*time immemorial*, or *time whereof the memory of man runneth not to the contrary*," is now, by the law of England, in many cases considered to include and denote the whole period of time, from the reign of King Richard the First, whereby the title to matters that have been long enjoyed is sometimes defeated, by shewing the commencement of such enjoyment, which is in many cases productive of inconvenience and injustice; for remedy thereof be it

Claims to right of com.

(*u*) A writ of distringas with a view to outlawry may issue in continuation of writs previously sued out to save the Statute of Limitations; *Ray* v. *Dow*, 5 Dowl. 310; 2 M. & W. 188; reported as *Reay* v. *Youde*.

(*x*) This is indispensable; *Gregory* v. *Des Anges*, 3 Scott, 534; 5 Dowl. 193.

mon, and other profits, *à prendre*, not to be defeated after thirty years enjoyment, by shewing the commencement.

enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That no claim which may be lawfully made at the common law, by custom, (*y*) prescription, (*z*) or grant, (*a*) to any right of common, (*b*) or other profit, (*c*) or benefit (*d*) to be taken and enjoyed from or upon any land of our sovereign lord the king, his heirs or successors, or any land being parcel of the Duchy of Lancaster, or of the Duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, (*e*) rent, (*f*) and services, (*g*) shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by showing only (*h*) that such right, profit, or

(*y*) Co. Litt. 110; Danv. 12; this includes such an easement as a right of way, *in alieno solo; Grimstead* v. *Marlow*, 4 T. R. 717; long usage is of no avail against *plain* statutory enactment.

(*z*) The general rule is, that every such claim is good, if by possibility it might have had a legal commencement; *Lord Pelham* v. *Pickersgill*, 1 T. R. 667.

(*a*) Co. Litt. 114 *a*; 1 Vent. 387.

(*b*) Of pasture, of turbary, Co. Litt. 122; Noy, 145; *Wilson* v. *Willes*, *Knight*, 7 East, 121; *Solme* v. *Bullock*, 3 Lev. 165; of piscary, of estovers, *Arundell* v. *Steere*, Cro. Jac. 25; of pasturage, *Jones* v. *Richards*, 6 Ad. & Ell. 530; *pur cause de vicinage*, *Heath* v. *Elliott*, 4 Bing. N. C. 388; 6 Scott, 172.

(*c*) As a toll, *Hill* v. *Priour*, 2 Show. 34; *Rowe* v. *Brenton*, 3 M. & R. 133.

(*d*) *E. g.* easement, *Manning* v. *Wasdale*, 1 N. & P. 172; 5 Ad. & Ell. 758; *Partridge* v. *Scott*, 3 M. & W. 220.

(*e*) *Post*, 2 & 3 Will. 4, c. 100, p. 138.

(*f*) Rent-service, rent-charge, rent-seck, Litt. s. 213; rents of assize, 2 Inst. 19 (including chief and quit-rents); and a fee farm-rent, Co. Litt. 143 *b*, n. 5; *Bradbury* v. *Wright*, 2 Dougl. 627, n. 1.

(*g*) Page 4.

(*h*) But it may be so by proving a leave, favour, or other matter, inconsistent with a claim, or assertion of right, *Campbell* v. *Wilson*, 3 East, 294.

benefit was first taken or enjoyed at any time prior to such period of thirty years; but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit, shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

After sixty years enjoyment the right to be absolute, unless had by consent or agreement.

S. 2.—No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way,(*i*) or other easement,(*k*) or to any watercourse,(*l*) or the use of any water, to be enjoyed or derived upon, over, or from any land or water of our said lord the king, his heirs or successors, or being parcel of the Duchy of Lancaster, or of the Duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as

In claims of right of way, or other easement, the periods to be twenty years and forty years.

(*i*) 1. A foot-way; 2. horse-way, and which includes a foot-way; 3. A carriage-way, and which includes both a horse and a foot-way; 4. A drift-way, Co. Litt. 56*a*; *Ballard* v. *Dyson*, 1 Taunt. 279; of necessity, *Osborn* v. *Wise*, 7 C. & P. 761; but a mere license to use a way during such times as the certain conditions are observed, does not constitute "any *right of way*," *Barraclough* v. *Johnson*, 3 N. & P. 233; 2 Jurist, 839.

(*k*) As the right in the occupier of an ancient messuage to water his cattle at a pond, and to take the water for domestic purposes for the mere convenience of his messuage, *Manning* v. *Wardale*, 1 N. & P. 172; 5 Ad. & El. 758.

(*l*) Domat's Civil Law, l. 1, t. 12, it includes a right of way, in order to go to and return from the well or pond, 2 Frederican Code, 146. The proprietor of each side is the proprietor of half the land covered by the stream; he has not the property of, but a right to use the water; and he cannot throw the water back above, or diminish that which would flow below, except under this provision, *Mason* v. *Hill*, 3 B. & Ad. 312; 5 B. & Ad. 1; *Howard* v. *Wright*, 1 Sim. & Stu. 190. But the stanners of Devonshire have no right by custom to divert water from streams into their mines; *Bastard* v. *Smith*, 2 M. & Rob. 129; 1 N. & P. 242; 5 Ad. & Ell. 827.

herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption, (*m*) for the full period of twenty years, shall be defeated or destroyed by shewing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated (*n*) in any other way by which the same is now liable to be defeated, and where such way or other matter as herein (*o*) last before-mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

Claim to the use of light enjoyed for twenty years.

S. 3.—When the access and use of light (*p*) to or for any dwelling house, workshop, or other building, (*q*) shall have been actually enjoyed (*r*) therewith for the

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(*m*) On an issue as to this enjoyment, the defendant must shew an uninterrupted enjoyment as of right during this period, *Monmouth Canal Company* v. *Harford*, 1 Cr. M. & R. 614; and must have been enjoyed openly, and as a person rightfully entitled would have used it, *Bright* v. *Walker*, 4 Tyr. 502; 1 Cr. M. & R. 211.

(*n*) But it is not defeated by proof of an agreed alteration of the line of way, nor by a temporary nonuser under an agreement of the parties, *Payne* v. *Shedden*, 1 M. & Rob. 382; nor is a prescriptive right of way to a public path on the banks of a navigable river destroyed by that part which adjoins the towing path being converted into a floating harbour, *Rex* v. *Tippett*, 3 B. & Ald. 193.

(*o*) As by a distinct series of interruptions acquiesced in, *Harvie* v. *Rogers*, 3 Bligh, N. S. 444; or by a release, or from nonuser for twenty years, *Moore* v. *Rawson*, 3 B. & C. 332; 5 D. & R. 234.

(*p*) 2 Saund. 175, *d.*; 175 *e.*; *Darwin* v. *Upton*, cited 3 T. R. 159; *Cross* v. *Lewis*, 2 B. & C. 686; 4 D. & R. 234.

(*q*) It does not apply to an open piece of ground, as a timber yard and saw pit, though requiring light and air, *Roberts* v. *Macord*, 1 M. & Rob. 230.

(*r*) The complete shutting up a window with bricks and mortar for above twenty years, takes away the privilege of light, *Laurence* v. *Obee*, 3 Campb. 514; so where a person entitled to ancient lights pulls down his house and erects a

full period of twenty years, without interruption, (s) the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding; unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

Before mentioned periods to be deemed those next before suits.

S. 4.—Each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before (t) some suit or action wherein the claim or matter to which such period may relate shall have been, or shall be brought into question; and that no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been, or shall be submitted to or acquiesced in for one year after the party interrupted shall have had, or shall have notice (u) thereof, and of the person making or authorising the same to be made.

In actions on the case, the claimant may allege his right generally.

S. 5.—In all actions upon the case, and other pleadings wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation (x) shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to sustain or rebut such allegation: and that in all pleadings (y) to actions of

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blank wall in the place of one where there were windows, and it cannot be shewn that it was a mere temporary abandonment of the enjoyment, with an intention to resume it within a reasonable time, *Moore* v. *Rawson*, 3 B. & C. 332; 5 D. & R. 234.

(s) Page 134, n. (m.)

(t) And a plea of user is bad on special demurrer, if it does not allege it to have been within the period next before the suit, *Richards* v. *Fry*, 3 N. & P. 67; 2 Jurist, 641.

(u) Direct, actual, and positive, when regularly and formally communicated; constructive, when the presumptions are so violent that the Court ought not to allow it to be controverted, *Plumb* v. *Fluit*, 2 Anst. 432.

(x) *Tebbutt* v. *Selby*, 6 Ad. & Ell. 786; *Wakeman* v. *West*, 8 C. & P. 105.

(y) In all actions in which a right of way, or common, or other similar right is pleaded, where the allegations as to

In pleas to trespass, and certain other pleadings, the periods mentioned in this act may be alleged. Exceptions, &c. to be replied to specially.

trespass, (z) and in all other pleadings wherein, before the passing of this act, it would have been necessary to have alleged the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, (a) as is now usually done; and if the other party shall intend to rely on any proviso, (b) exception, (c) incapacity, disability, contract, agreement, or other matter hereinbefore mentioned, from any cause or matter of fact, or of law, not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth, in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

Presumption to be allowed in claims herein provided for.

S. 6.—In the several cases mentioned in and provided for by this Act, no presumption (d) shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years, than for such period or number in this Act as may be applicable to the case and to the nature of the claim. (e)

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the extent of the right are taken distributively, they are to be taken so, Rules, Hil. 4 Will. 4, Trespass.

(z) A plea justifying on account of an alleged right to light under a license, ought to shew in what manner the right arose, *Bridges* v. *Blanchard*, 3 N. & M. 691.

(a) This means an estate to a man and his heirs, and over which he has a pure and absolute estate, and which cannot even determine by act of man in point of time, *Seymour's* case, 10 Rep. 97, *b*.

(b) Where a proviso depends on another sentence, or hath reference to another part, it never makes a condition, but rather a qualificaton or limitation of the sentence, or part of the deed to which it refers, *Lord Cromwell's* case, 2 Rep. 72; Dyer, 150, pl. 83.

(c) A saving of a particular out of a general thing, Co. Litt. 47.

(d) What may be doubted of, but is accounted truth, if the contrary is not proved.

(e) And therefore a licence cannot be presumed, *Doe* v. *Wilson*, 11 East, 56; or a right by prescription or grant how-

S. 7.—Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned, shall have been or shall be (*f*) an infant, idiot, *non compos mentis, feme covert*, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

Proviso for infants, &c.

S. 8.—Provided always and be it further enacted, that when any land or water upon, over, or from which any such way or other convenient watercourse, or use of water shall have been or shall be enjoyed or derived, hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion (*g*) expectant on the determination thereof. (*h*)

What time to be excluded in computing the term of forty years appointed by this Act.

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ever strong the circumstance may tend to support it, *Rex* v. *Wardroper*, 4 Burr. 2025; *Rex* v. *Dawes*, Id. 2121; *Bealey* v. *Shaw*, 6 East, 214; where the plaintiff prescribes for pasture, the *onus* lies on him to prove affirmatively his actual enjoyment of pasture for thirty years; and no presumption for a less period or proof of enjoyment can be admitted, *Bailey* v. *Appleyard*, 3 N. & P. 257; 2 Jurist, 872; but a right to a watercourse is not destroyed by the owner's altering its course, *Hall* v. *Swift*, 6 Scott, 167; 4 Bing. N. C. 381.

(*f*) There is not any saving in favour of persons beyond seas or in prison.

(*g*) The law termeth a reversion to be expectant on the particular estate, because the donor, or lessor, or their heirs after every determination of any particular estate doth expect or look for, to enjoy the lands or tenements again, 1 Inst. 183 *b*. The fact of his having had even express notice, *Daniel* v. *North*, 11 East, 372, will not, according to the principles of this provision, affect him.

(*h*) The other rights affected by this Act may be acquired

2 & 3 Will. 4, c. 100.

"*An Act for shortening the Time required in Claims of Modus Decimandi, or Exemption from or Discharge of Tithes.*" (*9th August*, 1832.)

Whereas the expence and inconvenience of suits instituted for the recovery of tithes may and ought to be prevented by shortening the time required for the valid establishment of claims of a *modus decimandi*, or exemption from or discharge of tithes, (*i*) be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that all prescriptions and claims of or for any *modus decimandi*, (*j*) or of or to any exemption (*k*) from or discharge of tithes by composition real or otherwise, shall in cases where the render of tithes in kind shall be hereafter demanded by our said lord the king, his heirs or successors, or by any Duke of Cornwall, or by any lay person, not being a corporation sole, (*l*) or by any body corporate of many, whether temporal or spiritual, be sustained and be deem-

What prescriptions and claims of modus decimandi to be valid in law.

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by enjoyment during the respective periods mentioned in the first and third sections, even though the parties acquiescing may have had particular estates only, unless the right exercised is founded on some writing.

(*i*) Non-payment of tithes does not raise as against a lay impropriator a presumption of a grant of the tithes to the land-owner, *Bayley* v. *Drever and others*, 1 Ad. & Ell. 449; 3 N. & M. 885.

(*j*) The case de modo decimandi, 13 Rep. 40; *Driffield* v. *Orrell*, 6 Price, 324; 3 E. & Y. 834; *Bishop of Winchester*'s case, 2 Rep. 44. It must be certain and invariable, *Bandrick* v. *Bushel*, 1 Keb. 602. The subject of it must be beneficial to the tithe-owner, *Hall* v. *Maltby*, 6 Price, 255; 3 E. & Y. 928; and be as durable as the tithe, *Perry* v. *Soam*, Cro. Eliz. 139; 2 P. Wms. 462.

(*k*) Cru. Dig. tit. 22, s. 56.

(*l*) 1. Where he acts in a corporate capacity for his own benefit: 2. where he acts only as a trustee for others; the case of *Sutton's Hospital*, 10 Rep. 1; *Fulwood*'s case, 4 Rep. 64 *b*.

ed good and valid in law, upon evidence showing in cases of claims of a *modus decimandi*, the payment or render of such *modus*, and in cases of claim to exemption or discharge showing the enjoyment of the land, without payment or render of tithes, money, or other matter in lieu thereof, for the full period of thirty years next before the time of such demand, unless, in the case of claim of a *modus decimandi*, the actual payment or render of tithes in kind or of money, or other thing differing in amount, quality, or quantity from the *modus* claimed, or in case of claim to exemption or discharge the render or payment of tithes, or of money, or other matter in lieu thereof, shall be shown to have taken place at some time prior to such thirty years; or it shall be proved that such payment or render of *modus* was made or enjoyment had by some consent or agreement expressly made or given for that purpose by deed or writing; and if such proof in support of the claim shall be extended to the full period of sixty years next before the time of such demand; in such cases the claim shall be deemed absolute and indefeasible; unless it shall be proved that such payment or render of *modus* was made or enjoyment had by some consent or agreement expressly made or given for that purpose by deed or writing: and where the render of tithes in kind shall be demanded by any archbishop, bishop, dean, prebendary, parson, vicar, master of hospital, or other corporation sole, whether spiritual or temporal, then every such prescription or claim shall be valid and indefeasible upon evidence shewing such payment or render of *modus* made, or enjoyment had, as is hereinbefore mentioned, applicable to the nature of the claim, for and during the whole time that two persons in succession shall have held the office or benefice in respect whereof such render of tithes in kind shall be claimed; and for not less than three years after the appointment and institution or induction of a third person thereto: Provided always that if the whole time of the holding of such two persons shall be less than sixty years then it shall be necessary to shew such payment or render of *modus* made or enjoyment had, (as the case may be,) not only during the whole of such time, but also during such further number of years, either before

Proviso.

or after such time, or partly before and partly after, as shall, with such time, be sufficient to make up the full period of sixty years: and also for and during the further period of three years after the appointment and institution or induction of a third person to the same office or benefice, unless it shall be proved that such payment or render of *modus* was made or enjoyment had by some consent or agreement, expressly made or given for that purpose by deed or writing.

What compositions for tithes shall be considered valid.

S. 2.—That every composition for tithes which hath been made or confirmed by the decree of any Court of equity in England, in a suit to which the ordinary patron and incumbent were parties, and which hath not since been set aside, abandoned, or departed from, shall be and the same is hereby confirmed and made valid in law; and that no *modus*, exemption, or discharge shall be deemed to be within the provisions of this Act, unless such *modus*, exemption, or discharge shall be proved to have existed and been acted upon at the time for within one year next before the passing of this Act.

To what cases this Act shall not extend.

S. 4.—Provided also, and be it further enacted, that this act shall not extend or be applicable to any case where the tithes of any lands, tenements, or hereditaments, shall have been demised by deed for any term of life, or number of years, or where any composition for tithes shall have been made by deed or writing, by the person or body corporate entitled to such tithes with the owner or occupier of the land, for any such term or number of years, and such demise or composition shall be subsisting at the time of the passing of this Act, and where any action or suit shall be instituted for the recovery or enforcing the payment of tithes in kind within three years next after the expiration, surrender, or other determination of such demise or composition.

Time during which lands shall be held by persons entitled to the tithes thereof to be excluded in the computation.

S. 5.—Provided also, and be it further enacted, that where any lands or tenements shall have been, or shall be held or occupied by any rector, vicar, or other person entitled to the tithes thereof, or by any lessee of any such rector, vicar, or other person, or by any person compounding for tithes with any such rector, vicar, or other person, or by any tenant of any such rector, vicar, or other person, or of any such lessee or compounder,

whereby the right to the tithes of such lands or tenements may have been or may be during any time in the occupier thereof, or in the person entitled to the rent thereof, the whole of every such time and times shall be excluded in the computation of the several periods of time hereinbefore mentioned.

S. 6.—Provided also that the time during which any person capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, *non compos mentis*, *feme covert*, or lay tenant for life, or during which any action, or suit, shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

As also the time during which any person capable of resisting any claim shall be an infant, &c.

S. 7.—That in all actions and suits to be commenced after this Act shall take effect it shall be sufficient to allege that the *modus*, or exemption, or discharge claimed was actually exercised and enjoyed for such of the periods mentioned in this Act as may be applicable to the case; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement, deed or writing hereinbefore mentioned; or any other matter of fact or of law, not inconsistent with the simple fact of the exercise and enjoyment of the matter claimed, the same shall be especially alleged, and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of the matter claimed.

What it shall be sufficient to allege in actions commenced under this Act.

S. 8.—In the several cases mentioned in and provided for by this Act no presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim.

No presumption allowed in support of any claim for any less period than hereinbefore mentioned.

3 & 4 Will. 4, c. 27.

"*An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for Trying the Right thereto.*"—[24 July, 1833.]

Meaning of the words in the Act.

Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same. That the words and expressions hereinafter mentioned, (*m*) which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be intepreted as follows, (that is to say,) the word "land" shall extend to manors, (*n*) messuages, and all other corporeal hereditaments (*o*) whatsoever, and also to tithes (other than tithes belonging to a spiritual (*p*) or eleemosynary (*q*) corporation sole, (*r*)) and also to any share, estate, or interest in them or any of them, whether the same shall be a freehold (*s*) or chattel (*t*) interest, and whether freehold or copy-

"Land."

(*m*) Epithets are mere formal inferences of law; *Rex* v. *Woodfall*, 5 Burr. 2666.

(*n*) *Doe* v. *Heakin*, 6 Ad. & Ell. 495; *Parrott* v. *Palmer*, 3 Myl. & Kee. 362.

(*o*) Co. Litt. 4, 6, a; *Winchester's case*, 3 Rep. 2; Shepp. T. 91.

(*p*) Co. Litt. 150 a; 1 Kid on Corporations, 22.

(*q*) 1 Bell's Law Dict. tit. Community; the case of *Sutton's Hospital*, 10 Rep. 31, 35; Skin. 484; Lucas, 146; *Phillips* v. *Bury*, 1 Ld. Raym. 6; *Rex* v. *Vice Chancellor of Cambridge*, 3 Burr. 1652, 1656.

(*r*) Co. Litt. 43; Case of *Sutton's Hospital*, 10 Rep. 29 a; Wood's Inst. 109.

(*s*) An interest for life or other larger estate, Watk. on Convey. by Morley and Coote, 63; *Taylor* v. *Horde*, 1 Burr. 108; and includes an encroachment from the waste, *Doe* v. *Jauncey*, 8 C. & P. 99.

(*t*) An interest for a *definite* space of time; 1 Preston on Estates, 203; *Corbet's case*, 4 Rep. 81 b; *Re Trinity House Corporation*, 2 You. & Col. 526.

hold (*u*) or held according to any other (*x*) tenure; and the word "rent" (*y*) shall extend to all heriots, (*z*) and to all services (*a*) and suits (*b*) for which a distress may be made, and to all annuities and periodical sums of money charged upon or payable out of any land, (except (*c*) moduses or compositions belonging to a spiritual or eleemosynary corporation sole); and the person through whom another person is said to claim, shall mean any person by, through, or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, (*d*) issue in tail, (*e*) tenant by the curtesy of England, (*f*) tenant in dower, (*g*) successor, (*h*) special (*i*) or general (*k*) occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise, and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat (*l*); and the word "per-

"Rent."

Person through whom another claims.

"Person."

(*u*) *Rex* v. *Hexham*, (Lord of Manor,) 5 Ad. & Ell. 599; 1 N. & P. 53; *Doe* v. *Webber*, 5 Scott, 189; 3 Bing. N. C. 922; it cannot be held by a corporation, *Att. Gen.* v. *Lewin*, 1 Coop. 51.

(*x*) Cru. Dig. i, chap. II. III.

(*y*) Litt. s. 213; 4 Geo. 2, c. 28, s. 5; as to a rent-charge, *Cupit* v. *Jackson*, M'Clel. 495.

(*z*) *Service*, *Lanyon* v. *Carne*, 2 Saund. 168; *custom*, Coke's Copyholder, s. 24; or a pecuniary payment in lieu of a heriot. *Croome* v. *Guise*, 4 Bing. N. C. 148; 5 Scott, 453.

(*a*) *Tomkins* v. *Crocker*, 2 Salk. 604; Carth. 520.

(*b*) An annuity under a will is within the section, *James* v. *Salter*, 4 Scott, 168; 3 Bing. N. C. 544; 5 Dowl. 496.

(*c*) See p. 138.

(*d*) *Counden* v. *Clerke*, Hob. 31.

(*e*) *Woodright* v. *Wright*, 10 Mod. 370; 1 Stra. 25.

(*f*) *Paine's case*, 8 Rep. 34b; Co. Litt. 29 b.; Dy. 25, *pl.* 159.

(*g*) *Menvil's case*, 13 Rep. 19 *b*.

(*h*) Co. Litt. 9 b, 94 b.

(*i*) As if an estate *per auter vie* is limited to A., his heirs, executors, administrators, or assigns: it descends to the heir as special occupant; *Atkinson* v. *Baker*, 4 T. R. 229.

(*k*) *Doe* v. *Scott*, 7 D. & R. 190; 4 B. & C. 706.

(*l*) *Burgess* v. *Wheate*, 1 Eden, 177; *Henchmann* v. *Att. Gen.* 2 Sim. & Stu. 498; 4 & 5 Will. 4, c. 23; 1 Jur. 281.

son" shall extend to a body politic, (*m*) corporate, or collegiate, (*n*) and to a class of creditors or other persons, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Number and gender.

No land or rent to be recovered but within twenty years after the right of action accrued to the claimant or some person whose estate he claims.

S. 2.—After the thirty-first day of December, one thousand eight hundred and thirty-three, no person shall make an entry, (*o*) or distress, or bring an action to recover any land (*p*) or rent but within twenty years next after the time at which the right (*q*) to make such entry or distress or to bring such action shall have

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(*m*) This Act does not extend to the Queen or her successors, not being specially named therein; *Magdalen College case*, 11 Rep. 68.

(*n*) *Phillips* v. *Bury*, 2 T. R. 346, n.

(*o*) This right is tried by action of ejectment; and in which the claimant can only recover by the strength of his own title and not by the weakness of the other party; *Roe* d. *Crow* v. *Baldwere*, 5 T. R. 110, in notis; *Taylor* v. *Horde*, 1 Burr. 111; *Widdowson* v. *Earl of Harrington*, 1 J. & W. 532. But the party having recovered in ejectment cannot, by his own act only, and without the authority of the Court, take possession; *Doe* d. *Stephens* v. *Lord*, 6 Dowl. 257; unless there is no one in possession, in which case if he has a legal right of entry he may do so of his own accord; *Taunton* v. *Coster*, 7 T. R. 431; *Turner* v. *Meymott*, 7 J. B. Moore, 574; 1 Bing. 158.

(*p*) This includes "common" inclosed for twenty years, and after which time the right of entry is gone; *Hawke* v. *Bacon*, 2 Taunt. 159; *Creach* v. *Wilmot*, 2 Taunt. 160, n.

(*q*) The claimant must have a right of possession as well as of property; *Taylor* v. *Horde*, 1 Burr. 119, for no other right or title is within these statutes, except that which is accompanied by a right of possession; *Doe* d. *Cook* v. *Danvers*, 7 East, 299; an heir on whom a contingent remainder in a copyhold has devolved has a right of entry before admittance; *Doe* v. *Rolfe*, 3 N. & P. 648; see as to title of allottee under local inclosure act, *Doe* v. *Saunders*, 5 Ad. & Ell. 664; or under allotments in exchange, *Cox* v. *King*, 4 Scott, 553.

first (*q*) accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.

When the right shall be deemed to have first accrued in the case of an estate in possession.

S. 3.—In the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned; (that is to say) when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession (*r*) or in receipt of the profits (*s*) of such land, or in receipt of such rent, (*t*) and shall while entitled thereto have been dispossessed, (*u*) or have discontinued (*x*) such possession or receipt, (*y*) then such right shall be deemed to have first accrued at the time of such dispossession

On dispossession.

(*q*) A wrongful holding over of possession, after the expiration of a title under which the adverse party lawfully entered, is within this section; *Doe* v. *Gregory*, 4 Nev. & M. 308.

(*r*) The general possession of a lord of a manor is not sufficient, and does not include mines actually in the possession of another, for they constitute a distinct possession, and may be different inheritances; *Lord Cullen* v. *Johnson*, 2 Stra. 1141; as a general rule, the possession of a lessee is in law that of the lessor; 2 Brown, 298; *Warren* v. *Fearnside*, 1 Wils. 176; 3 Wils. 521; and even though the tenancy be "at will" only; Bull. *Ni. Pri.* 102.

(*s*) 1 Inst. 4 *b.*; Cru. Dig. vol. iv. 284.

(*t*) The payment of tithes, covenanted to be rendered under a lease, will be a sufficient acknowledgment of the lessor's title; *Roe* d. *Pellatt* v. *Ferrars*, clerk, 2 B. & P. 542.

(*u*) Actual ouster does not mean real force, for a man may come in by rightful possession, and yet hold over adversely without title: if he does, such holding over, under circumstances, will be equivalent to an actual ouster; *Doe* v. *Prosser*, 1 Cowp. 217.

(*x*) 1 Saund. 258 *a*, 319 *a*.

(*y*) Though rent is not received for six years, yet the right remains, for the remedy is only lost.

or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; (z) and when the person claiming any such land or rent shall claim the estate or interest of some deceased person, who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, (a) and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) (b) to him or some person through whom he claims, by a person being in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims became entitled to such possession or receipt by virtue of such instrument; and when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest,

On abatement or death.

On alienation.

In cases of future estates.

(z) *Doe* v. *Wilkinson*, 3 B. & C. 413; 5 D. & R. 273.

(a) With respect to the period when this may be presumed, reference should be made to the statute 19 Car. 2, c. 6, with regard to leases dependent on lives; and to the doctrine of bigamy, 1 Jac. 1, c. 11, and by which the presumption as to the duration of life is said to arise, with respect to persons of whom no account can be given at the expiration of seven years from the time when they were last known to be living; *Stowell* v. *Lord Zouch*, Plow. 358; *Doe* v. *Jesson*, 6 East, 80; *Hopewell* v. *De Pinna*, 2 Campb. 113; *Doe* v. *Deakin*, 4 B. & A. 433; *Rex* v. *Inhabitants of Twyning*, 2 Id. 386. The presumption as to the precise time depends on the circumstances of each case; *Watson* v. *King*, 1 Stark. 121; *Paterson* v. *Black*, Park's Insurance, 644; *Rowe* v. *Hasland*, 1 W. Bla. 404; *Doe* v. *Nepean*, 2 N. & M. 219; 5 B. & Ad. 86.

(b) 1 Vict. c. 26.

and no person shall have obtained the possession or receipt of the profits of such land, or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture, (*c*) or breach of condition, (*d*) then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition was broken.

In case of forfeiture, or breach of condition.

S. 4.—Provided always, that when any right to make an entry or distress, or to bring an action to recover any land or rent by reason of any forfeiture, or breach of condition, shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not (*e*) have been recovered by virtue

When advantage of forfeiture is not taken by remainderman, he shall have a new right when his estate comes into possession.

(*c*) This will not take effect on a mere attempt to do an act, the commission of which is a forfeiture; *Jones* v. *Wyse*, 2 Keen, 285. And it cannot be acted on by one of several coparceners; *Doe* v. *Lewis*, 5 Ad. & Ell. 277.

(*d*) A restraint annexed to a thing, or a restriction to men's acts, West. Symb. part 1, *lib.* iii. s. 156; a lessor may always make the estate of his lessee conditional, and the assignee takes it subject to such condition; but where the party as to whom the condition applies is really ignorant of the existence of an instrument in which the condition is contained, and where he would have a good title if there was no such instrument, a neglect of the terms of the condition will not subject him to a loss of the estate; and the party entitled to avail himself of the condition must make it known to the party so subject thereto; *Frances' case*, 8 Rep. 89 *b*; Shepp. Touch. 148; *Malloon* v. *Fitzgerald*, 3 Mod. 28; Skin. 125; *Doe* v. *Lord W. Beauclerk*, 11 East, 657

(*e*) In these instances it will still be optional in the party in whom the estate expectant on the particular estate is, whether to bring his ejectment or not; *Doe* v. *Danvers*, 7 East, 299; such a right of entry cannot be assigned, and must be taken advantage of by the person seised of it at the time; *Fenn* v. *Smart*, 12 East, 444; the previous estate, therefore, only ceases upon the right of re-entry being taken advantage of; *Doe* v. *Peck*, 1 B. & Ad. 436.

of such right, the right to make an entry (*f*) or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest, at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

Reversioner to have a new right.

S. 5.—Provided also, that a right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof, or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall at any time, previously to the creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land, or the receipt of such rent.

An administrator to claim as if he obtained the estate without interval after death of deceased.

S. 6.—For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant (*g*) of the letters of administration.

In the case of a tenant at will, the right

S. 7.—When any person shall be in possession, or in receipt of the profits of any land, or in receipt of any

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(*f*) Where an estate commences by livery, it cannot be determined before entry; Plowd. 135; and an actual entry must be made before bringing an ejectment for a forfeiture of a freehold lease; Co. Litt. 218; *Cholmley's case*, 2 Rep. 53 *a*; *Doe* v. *Flyn*, 4 Tyr. 625.

(*g*) *Wankford* v. *Wankford*, 1 Salk. 301; *Woolley* v. *Clark*, 5 B. & A. 744. The title of an executor always takes effect from the death of the testator; *Hickman* v. *Walker*, Willes, 27. The above section effectively vests the title in the administrator by relation; *Rex* v. *Inhabitants of Horsley*, 8 East, 410; *Sewercropp* v. *Day*, 3 N. & P. 670.

rent, as tenant at will, (*i*) the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, (*k*) or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined: Provided always, that no mortgagor, (*l*) or *cestuique trust*, (*m*) shall be deemed to be a tenant at

shall be deemed to have accrued at the end of one year. (*h*)

(*h*) In construing s. 2, which limits the time to twenty years after the right accrues, s. 34, which extinguishes the right at the end of the limited period, and the present section, it is held, that no title accrues to a party, who, as tenant at will, has held without interruption for twenty years after the expiration of the first year, but who has quitted possession before the passing of the Act; that as against the original landlord, and those claiming under him, he is without title, and even against a stranger; *Doe* v. *Thompson*, 6 Ad. & Ell. 721.

(*i*) The occupation of an under-tenant, who is in possession at the determination of the original lease, and is permitted by the reversioner to hold over, is not a holding at will, but *quasi* of a tenant at sufferance, and exists during the bare acquiescence, or without the disagreement of the party entitled to the possession being expressed; Co. Litt. 270 *b*; *Butler* v. *Duckmanton*, Cro. Jac. 169; *Sykes* v. ———, cited 1 T. R. 161; and the mere fact of occupation, coupled with the payment of rent for such time of occupation, does not raise a different presumption; *Simpkin* v. *Ashurst*, 4 Tyr. 781; 1 Cr. M. & R. 261.

(*k*) A feoffment made by the lessor, with livery of seisin made on the land, operates as a determination of the will, even though the tenant at will was off the land when the livery was made, and had not any notice of such determination; *Ball* v. *Cullimore*, 2 Cr. M. & R. 120; so also, where the tenant, or his representative, claims the land as his own; *Doe* v. *Thompson*, 1 N. & P. 215; 5 Ad. & El. 532.

(*l*) The mortgagor, after the mortgage is forfeited, has not any legal interest in the estate, as to the mortgagee; *Doe* v. *Maisey*, 3 M. & R. 107; 8 B. & C. 767; and may be ejected without any demand of possession; *Thunder* v. *Belcher*, 3 East, 449; *Cholmondeley* v. *Clinton*, 2 Mer. 359; 2 J. & W. 138.

(*m*) *Smith* v. *Wheeler*, 1 Ventr. 130.

will, within the meaning of this clause, to his mortgagee or trustee.

No person after a tenancy from year to year to have any right but from the end of the first year, or last payment of rent.

S. 8.—When any person shall be in possession, or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year (*n*) or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

Where rent amounting to 20*s.* reserved by a lease in writing, shall have been wrongfully received, no right to accrue on the determination of the lease.

S. 9.—When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing, by which a rent amounting to the yearly sum of twenty shillings (*o*) or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been

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(*n*) It may exist unless surrendered or determined by a regular notice to quit for an indefinite period; *Birch* v. *Wright*, 1 T. R. 380; *Doe* v. *Porter*, 3 T. R. 13; *Bolton (Lord)* v. *Temlin*, 5 Ad. & Ell. 856; 1 N. & P. 247; in case of attornment; *Chauner* v. *Boulter*, 6 Ad. & Ell. 175; 1 N. & P. 650; where the only evidence is payment of rent, the party paying is in all cases at liberty to explain the payment, and to show on whose behalf it was received; *Doe* v. *Francis*, 2 M. & Rob. 57.

(*o*) Where the rent is less, the law remains as before; if no rent has been paid to another, the right of entry exists at the determination of the lease; *Orrell* v. *Maddox*, Runn. Ej. App. 456. The adverse receipt of rent is not material; *Doe* v. *Danvers*, 7 East, 299; *Bushby* v. *Dixon*, 3 B. & C. 298; 5 D. & R. 126; but the landlord's title is barred if he knows of an attornment to another and acquiesced; *Cholmondeley* v. *Clinton*, Turn. & Russ. 107; *Hovenden* v. *Lord Annesley*, 2 Sch. & Lef. 624; *Doe* v. *Flynn*, 4 Tyr. 619; *Meredith* v. *Gilpin*, 6 Price, 146.

made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims, to make an entry or distress or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

A mere entry not to be deemed possession.

S. 10.—No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon. (*p*)

No right to be preserved by continual claim.

S. 11.—No continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action. (*q*)

Possession of one coparcener, &c. not to be the possession of the others.

S. 12.—When any one or more of several persons entitled to any land or rent as coparceners, (*r*) joint-tenants, (*s*) or tenants in common, (*t*) shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. (*u*)

(*p*) This abrogates the "right of entry" declared by the statute 4 Anne, c. 16, s. 16, and which also required it to be prosecuted with effect within a year and a day; 1 Wms. Saund. 1, *n*. (1); 10 B. & C. 848.

(*q*) Litt. ss. 414, 415; *Ford* v. *Gray*, 1 Salk. 285.

(*r*) *Doe* d. *Crosthwaite* v. *Dixon*, 5 Ad. & Ell. 835; 1 N. & P. 255.

(*s*) *Fisher* v. *Wiggs*, 12 Mod. 301; 1 Inst. 189.

(*t*) *Heatherley* v. *Weston*, 2 Wils. 232.

(*u*) In ejectment by one tenant in common against another, the latter is entitled to enter into the limited consent rule, to confess lease and entry and ouster of the nominal plaintiff, in case an actual ouster of plaintiff's lessor should be proved at the trial, but not otherwise; *Doe*

Possession of a younger brother not to be the possession of the heir.

S. 13.—When a younger brother, or other relation of the person entitled as heir to the possession or receipt of the profits of any land, or to the receipt of any rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir.

Acknowledgment in writing given to the person entitled, or his agent, to be equivalent to possession or receipt of rent.

S. 14.—Provided always, and be it further enacted, that when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent (*x*) in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.

Where possession is not adverse at the time of passing the act, the right shall not be barred until the end of five years afterwards.

S. 15.—Provided also, and be it further enacted, that when no such acknowledgment as aforesaid shall have been given before the passing of this act, and the possession or receipt of the profits of the land, or the receipt of the rent, shall not at the time of passing of this act have been adverse to the right or title of the person claiming to be entitled thereto, then such person, or the

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v. *Roe*, 2 Jurist, 1090; an actual ouster will arise, as between tenants in common, where the premises in question (consisting of houses) have been pulled down by one of such parties, and a railroad constructed on its site, and occupied as such; *Doe* d. *Wawn* v. *Horn*, 3 M. & W. 333.

(*x*) As under an authority to receive the rents, to bring actions in case of non-payment, to give notices to quit, and to bring ejectments in case of non-compliance; *Poole* v. *Warren*, 3 N. & P. 693.

person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry, or distress, or bring an action to recover such land or interest, at any time within five years next after the passing of this act. (*y*)

Persons under disability of infancy, lunacy, coverture, or beyond seas, and their representatives, to be allowed

S. 16.—Provided always, and be it further enacted, that if at the time at which the right of any person (*z*) to make an entry, or distress, or bring an action to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities herein-after mentioned, (*a*) (that is to say,) infancy, coverture, idiotcy, lunacy, (*b*) unsoundness of

(*y*) This period having now elapsed, the former doctrine of non-adverse possession is done away with, and therefore an ejectment must be brought, or a distress made, as the case may be, within the twenty years next after the original right of entry or distress accrued, and whatever may be the nature of the defendant's possession, *Nepean* v. *Doe* d. *Knight*, 2 M. & W. 894; even though he entered as heir at law, and the action is by the devisees under the will of the ancestor, *Doe* d. *Burgess* v. *Thompson*, 1 N. & P. 215; 5 Ad. & El. 532; or the mortgagee, over the mortgagor remaining in possession, *Doe* d. *Jones* v. *Williams*, 5 Ad. & Ell. 291. The following is a remarkable instance of possession becoming *adverse;* A. being in occupation of lands attorns to B., who claims the fee, and enters in the name of, taking possession. The land is copyhold; after the attornment B. is not admitted, nor does he receive rent, or occupy, or in any way interfere with the land, the fee in which is several times sold, with proper formalities in the Manor Court, within the twenty years following; B. is, even though A. continues in possession until within twenty years of the ejectment being brought, barred at the end of that time from an ejectment, *Doe* d. *Linsey* v. *Edwards*, 5 Ad. & Ell. 25.

(*z*) Where an estate descends to parceners, and some are under a disability, but one is not, the case is not within this section; *Doe* v. *Rowlston*, 2 Taunt. 441; *Cotterell* v. *Dutton*, ib. 826; *Perry* v. *Jackson*, 4 T. R. 516.

(*a*) It must be remarked, that imprisonment is here omitted.

(*b*) Except so far as it is controuled by the next section, the statute does does not begin to run until all disability has ceased, whether in the same or another person, 2 Preston on

ten years from the determination of their disability or death.

mind, or absence beyond seas, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry, or distress, or bring an action to recover such land or rent, at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid, shall have ceased (c) to be under any such disability, or shall have died (which shall have first happened).

But no action &c. shall be brought beyond forty years after the right of action accrued.

S. 17.—Provided nevertheless, and be it further enacted, that no entry, distress, or action, shall be made, or brought by any person who, at the time at which his right to make an entry, or distress, or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities herein-before mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, (d) although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired. (e)

No further time to be allowed for a succession of disabilities.

S. 18.—Provided always, and be it further enacted, that when any person shall be under any of the disabilities herein-before mentioned, at the time at which his right to make an entry, or distress, or to bring an action to recover any land, or rent, shall have first accrued, and shall depart this life, without having ceased to be under any such disability, no time to make an entry, or distress, or to bring an action to recover such land, or rent, beyond the said period of twenty years next after the right of such person to make an entry or distress, or to bring an action to recover such land or

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Abstracts, 340; Blanchard (Limitation), 21; *Lessee of Supple* v. *Haymond*, 1 Hayes, 6.

(c) *Knipe* v. *Palmer*, 2 Wils. 130.

(d) And there is not any distinction in this respect between what is called voluntary or involuntary disability, *Doe* v. *Jones*, 4 T. R. 300.

(e) *Collard* v. *Hare*, 2 Russ. & Myl. 775.

rent, shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

S. 19.—No part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, or Sark, nor any island adjacent to any of them (being part of the dominions of his Majesty), shall be deemed to be beyond seas within the meaning of this act.

Scotland, Ireland, and the adjacent islands not to be deemed beyond seas.

S. 20.—When the right of any person to make any entry, or distress, or bring an action to recover any land or rent, to which he may have been entitled for an estate, or interest, in possession, shall have been barred by the determination of the period herein-before limited, which shall be applicable in such case, and such person shall at any time during the said period have been entitled to any other estate, interest, right, or possibility, in reversion, remainder, or otherwise, in or to the same land or rent, (*f*) no entry, distress, or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent, in respect of such other estate, interest, right, or possibility, unless in the meantime such land or rent shall have been recovered by some person entitled to an estate, interest, or right which shall have been limited, or taken effect after, or in defeasance (*g*) of such estate or interest in possession.

When the right to an estate in possession is barred, the right of the same person to future estates shall also be barred.

(*f*) According to the maxim of the civil law, *Quando duo jura concurrent in unâ personâ, æquum est ac si essent in diversis*, Moor, 793; *Acton's case*, 4 Rep. 118; *Calvin's case*, 7 Rep. 2 *b*, 14 *b*; and this formed the rule in the English law heretofore, *Hunt* v. *Bourn*, 1 Salk. 339; 2 Salk. 421; 1 Lutw. 779.

(*g*) In all cases where any thing executory is created by a deed, the same thing, by consent of all parties who were parties to the creation of it, may be defeated and annulled. And therefore warranties, recognizances, rents charges, annuities, covenants, leases for years, uses at the common law, and such like, may, by a defeasance made with the mutual consent of all those who were parties to the creation of them, be by deed annulled, discharged, and defeated, *Albany's case*, 1 Rep. 113, *a*.

Where tenant in tail is barred, remainderman, whom he might have barred, shall not recover.

S. 21.—When the right of a tenant in tail of any land or rent, to make an entry, or distress, or to bring an action to recover the same, shall have been barred by reason of the same not having been made, or brought, within the period hereinbefore limited, which shall be applicable in such case, no such entry, distress, or action shall be made or brought by any person claiming any estate, interest, or right which such tenant in tail might lawfully have barred. (*h*)

Possession adverse to a tenant in tail, shall run on against the remainderman whom he might have barred.

S. 22.—When a tenant in tail of any land, or rent, entitled to recover the same, shall have died before the expiration of the period hereinbefore limited, which shall be applicable, in such case, for making an entry, or distress, or bringing an action to recover such land or rent, no person claiming any estate, interest, or right, which such tenant in tail might lawfully have barred, shall make an entry, or distress, or bring an action to recover such land, or rent, but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress, or brought such action.

Where there has been possession, under an assurance, by a tenant in tail, which shall not bar the remainders,

S. 23.—When a tenant in tail of any land, or rent, shall have made an assurance thereof, which shall not operate to bar an estate or estates to take effect after or in defeasance of his estate tail, (*i*) and any person shall, by virtue of such assurance, at the time of the execution thereof, or at any time afterwards, be in pos-

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(*h*) A common recovery duly suffered is not only a good bar to an estate tail, but is also a bar to all remainder, and to the reversion dependent on such estate tail, and also to all charges and incumbrances created by the persons in remainder and reversion, *Hudson* v. *Benson*, 2 Lev. 28; Sir T. Raym. 236. In a case of entail, the remainder-man, not being so barred, had a right of entry at the determination of the estate tail; *Taylor* v. *Horde*, 1 Burr. 60; 2 Cowp. 689. The effect of this provision is, that an adverse possession against the tenant in tail runs, at the same time, against the issue in tail and those in remainder, even though the issue, and those in remainder, cannot have a right of entry while the tenant in tail lives, and his estate subsists.

(*i*) As by feoffment, release, confirmation, or fine, *Driver* v. *Hussey*, 1 H. Bla. 269; or assurance in lieu of a fine, under 3 & 4 Will. 4, c. 74.

session, or receipt of the profits of such land, or in the receipt of such rent, and the same person, or any other person whatsoever, (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after, or in defeasance of the estate tail,) shall continue, or be in such possession, or receipt, for the period of twenty years(*k*) next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail, or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then at the expiration of such period of twenty years, such assurance shall be, and be deemed to be effectual, as against any person claiming any estate, interest, or right to take effect after, or in defeasance of such estate tail.

they shall be barred at the end of twenty years after the time when the assurance, if then executed, would have barred them.

S. 24.—After the said thirty-first day of December, one thousand eight hundred and thirty-three, no person claiming any land, or rent, in equity, shall bring any suit(*l*) to recover the same, but within the period(*m*) during which, by virtue of the provisions hereinbefore contained, he might have made an entry, or distress, or brought an action to recover the same respectively, if he had been entitled at law to such estate, interest, or

No suit in equity to be brought after the time when the plaintiff, if entitled at law, might have brought an action.

(*k*) The effect of this section is, to extend the inference formerly arising upon a long possession, adverse to a tenant in tail, *Doe* v. *Pike*, 3 B. & Ad. 742; 1 N. & M. 385; and to make such a possession for twenty years, coupled with the power of the tenant in tail to bar those in remainder, equivalent to a perfect assurance, by which, *per se*, such estates would have been barred.

(*l*) Where a bill for tithes was filed against occupiers of land within the time prescribed, and the bill was afterwards, and after the time limited, amended, by making the owner of the land a party, it was held, that the original and amended bill formed but one record, and that the suit was therefore in time, *Thorpe* v. *Mattingley*, 2 You. & Col. 421.

(*m*) The same exceptions and disabilities as are applicable to proceedings at law apply here, *Stackhouse* v. *Bamston*, 10 Ves. 466; *Andrew* v. *Wrigley*, 4 Br. C. C. 125; *Cook* v. *Arnham*, 3 P. Wms. 287; Cooper, C. C. 161; *Beckford* v. *Wade*, 17 Ves. 99, 184; 19 Ves. 327; 2 Mer. 358.

right, in or to the same, as he shall claim therein in equity.(*n*)

In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser.

S. 25.—Provided always, and be it further enacted, that when any land, or rent, shall be vested in a trustee, (*o*) upon any *express* trust, (*p*) the right of the *cestuique trust*, (*q*) or any person claiming through him to bring a suit against the trustee, or any person claiming through him, to recover such land, or rent, shall be deemed to have first accrued, according to the meaning of this act, (*r*) at and not before the time at which such land, or rent, shall have been conveyed to a purchaser(*s*) for a valuable (*t*) consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him. (*u*)

(*n*) As where fraudulent sales were made by tenant for life, and he lived for thirty-five years afterwards, it was held, that the tenant in remainder, praying to redeem, and within twenty years after he became entitled, was within time, *Bandon (Earl)* v. *Becher*, 3 Cl. & Fin. 479; and see *Collard* v. *Russell*, 2 Russ. & Myl. 775.

(*o*) *Urch* v. *Walker*, 2 Jurist, 487 (C.)

(*p*) There must be sufficient words, a definite subject, and a certain object, *Moggridge* v. *Thackwell*, 7 Ves. 85; in this case no time as between the trustee and the *cestuique* trust will be a bar, Barnard. C. R. 449; *Townsend* v. *Townsend*, 1 Cox, 28; 1 Br. C. C. 351.

(*q*) *Burgess* v. *Wheate*, 1 Eden, 226.

(*r*) Where the trustee has advanced money to the *cestuique* trust, equivalent to the value of the estate, a Court of equity will, if the transaction be a fair and proper one, support it, *Chalmers* v. *Bradley*, 1 J. & W. 51, and cases there quoted; *Gregory* v. *Gregory*, Coop. C. C. 201; *Champion* v. *Rigby*, 1 Russ. & M. 539; and it will not allow a claim made after a great lapse of time, against a trustee, by implication from a doubtful equity, *Townsend* v. *Townsend*, 1 Cox, 28; nor where the length of time makes it difficult to ascertain the true state of the facts, *Beckford* v. *Wade*, 17 Ves. 97; *Bonny* v. *Ridgard*, 4 Br. C. C. 138.

(*s*) As a mortgagee, *Hardwick* v. *Mynd*, 1 Anst. 109.

(*t*) Money, or other thing that bears a known name; as also marriage, Com. Dig. iv. 24; *Colyear* v. *Mulgrave (Countess)*, 2 Keen, 81.

(*u*) But the *cestuique* trust is barred by length of time, operating against the legal estate, *Hovenden* v. *Lord Annesley*,

S. 26.—In every case of a *concealed*(*x*) fraud,(*y*) the right of any person to bring a suit in equity for the recovery of any land or rent, of which he or any person through whom he claims may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence(*z*) might have been first known or discovered; provided that nothing in this clause contained shall enable any owner of lands, or rents, to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands, or rents, on account of fraud against any *bonâ fide* purchaser for valuable consideration,(*a*) who has not assisted in the commission of such fraud, and who, at the time that he made the purchase,(*b*) did not know, and had no reason to believe that such fraud had been committed. (*c*)

In cases of fraud, no time shall run whilst the fraud remains concealed.

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2 Sch. & Lef. 629; *Cholmondeley* v. *Clinton*, 2 J. & W. 175.

(*x*) As where the obscurity of the transaction disables the party from obtaining full information of his rights, *Murray* v. *Lord Palmer*, 2 Sch. & Lef. 487; *Gordon* v. *Gordon*, 3 Swanst. 400; or if information is kept back by the holder, *M'Carthy* v. *Dicaie*, 2 Russ. & M. 614.

(*y*) As if a deed is executed by an unlettered man, and it is not ever, or untruly, read over to him, *Thoroughgood's case*, 2 Rep. 9; good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact, and his believing the contrary, per Lord Mansfield, *Carter* v. *Boehm*, 3 Burr. 1910. The same evidence is admissible to prove a fraud, committed by a third party, as if he himself was the party, but with the exception of his admission subsequent to the transaction, *Keable* v. *Payne*, 3 N. & P. 531; *Bandon* v. *Becher*, 9 Bligh, 532.

(*z*) *Rutledge* v. *Giles*, 2 Tyr. 169.

(*a*) *Wallyn* v. *Lee*, 9 Ves. 33.

(*b*) This applies to the time of the conveyance, *Davis* v. *Thomas*, 2 You. & Col. 234.

(*c*) This species of notice binds the party to further inquiry, *Taylor* v. *Baker*, 1 Dan. 71; but a party, though himself affected by notice, has the benefit of the want of notice by intermediate parties, *M'Queen* v. *Farquhar*, 11 Ves. 478; and notice to a purchaser in one transaction will not

Saving the jurisdiction of equity on the ground of acquiescence or otherwise.

S. 27.—Provided always and be it further enacted, that nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of Courts of Equity in refusing relief on the ground of acquiescence, (*d*) or otherwise, (*e*) to any person whose right to bring a suit may not be barred by virtue of this Act.

Mortgagor to be barred at the end of 20 years from the time when the

S. 28.—When a mortgagee (*f*) shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, (*g*) shall

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affect him in an independent subsequent one, *Hamilton* v. *Royse*, 2 Sch. & Lef. 315; effect of notice, *Foster* v. *Cockerell*, 9 Bligh, 333; and see the following cases, constructive notice, *Dryden* v. *Frost*, 1 Jurist, 330 (V. C.); 2 Id. 1030 (C.); where notice is not implied, *Miles* v. *Langley*, 2 Russ. & Myl. 626; as to fraud, *Kennedy* v. *Green*, 3 Myl. & K. 699.

(*d*) This does not ever arise in acts which the party is ignorant at the time that he has a right to acquire or dispute, *Cholmondeley* v. *Clinton*, 2 Mer. 362; *Randall* v. *Errington*, 10 Ves. 427; *Morse* v. *Royal*, 12 Ves. 355; a *cestuique trust* being of full age, and not under an incapacity, is, if he openly acquiesces in the conduct of a trustee, in itself liable to objection, and for a considerable time, deemed to have acquiesced; *Trefford* v. *Boehm*, 3 Atk. 444; *Brice* v. *Stokes*, 11 Ves. 319; *Walker* v. *Symonds*, 3 Swanst. 64; *Ryder* v. *Bickerton*, Id. 83, n.; *Underwood* v. *Stevens*, 1 Mer. 712. So acquiescence for a long time in a mortgage transaction is a bar; *Hicks* v. *Cooke*, 4 Dow, 17. So in other cases of fraud or mistake; *Selsey* v. *Rhodes*, 2 Sim. & Stu. 41; 1 Bligh. N. S. 1; or as to a will questioned by the heir; *Tucker* v. *Sanger*, M'Clel. 424; 13 Price, 119; the same rule as to time holds, and the same principle is applicable to shareholders of a canal questioning an agreement made by the governing body; *Gray* v. *Chaplin*, 2 Russ. 126; but it will not hold while there is on one side undue influence, and on the other distress of means; *Purcell* v. *Macnamara*, 14 Ves. 106.

(*e*) As where the *cestuique* trust is a party to the conveyance; *Walker* v. *Symonds*, 3 Swanst. 64; *Pickering* v. *Lord Stamford*, 2 Ves. jun. 583.

(*f*) *Jones* v. *Smith*, 2 Ves. 378.

(*g*) This applies to the remainderman where the whole in-

not bring a suit to redeem (*h*) the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor, or of his right of redemption, shall have been given to the mortgagor or some person claiming his estate, (*i*) or to the agent of such mortgagor or person, in writing, signed by the mortgagee or the person claiming through him; (*j*) and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given; and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons; but where there shall be more than one mortgagee or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid; and the person or persons claiming any part of the mortgage money or land, or rent, by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money, or land, or rent; and where such of the mortgagees or

mortgagee took possession, or from the last written acknowledgment.

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terest is in mortgage; *Harrison* v. *Hollins*, 1 Sim. & Stu. 471.

(*h*) If a decree for redeeming is obtained it must be prosecuted within twenty years, or the right is barred; *St. John* v. *Turner*, 2 Vern. 418.

(*i*) Whether as heir, devisee, or assignee.

(*j*) As his assignee, *Matthews* v. *Walwyn*, 4 Ves. 118; a mere agent is not sufficient, *Barrow* v. *Martin*, Coop. C. C. 189.

persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage. (*k*)

No lands or rents to be recovered by ecclesiastical or eleemosynary corporations sole, but within two incumbencies and six years, or sixty years.

S. 29.—Provided always, and be it further enacted, that it shall be lawful for any archbishop, bishop, dean, prebendary, parson, vicar, master of hospital, (*l*) or other spiritual (*m*) or eleemosynary (*n*) corporation sole, (*o*) to make an entry or distress, or to bring an action or suit to recover any land or rent within such period as hereinafter is mentioned next after the time at which the right of such corporation sole, or of his predecessor, to make such entry, or distress, or bring such action or suit, shall first have accrued; (that is to say,) the period during which two persons in succession shall have held the office, (*p*) or benefice, (*q*) in respect whereof such land or rent shall be claimed, and six years after a third person shall have been appointed thereto, if the times of such two incumbencies and such term of six years taken together shall amount to the full period of sixty years; and if such times taken together shall not amount to the full period of sixty years, then during such further number of years in addition to such six years as will, with the time of holding of such two persons and such six years, make up the full period of sixty years:

(*k*) And see post, 1 Vict. c. 58.

(*l*) *The Master of Sutton's Hospital*, 10 Rep. 1.

(*m*) Burn Eccl. Law, *Monast.*

(*n*) 1 Kyd on Corporations, 26.

(*o*) *Fulwood's case*, 4 Rep. 64.

(*p*) Co. Litt. 44 *a*; *Bishop of Sarum's case*, 1 Rep. 58 b, 61; *Gee* v. *Friedland*, Cro. Car. 47, 49.

(*q*) *Bennett* v. *Lincoln*, 7 B. & C. 113.

and after the said thirty-first day of December, one thousand eight hundred and thirty-three, no such entry, distress, action, or suit shall be made or brought at any time beyond the determination of such period. (*r*)

S. 30.—No person shall bring any *quare impedit* (*s*) or other action, or any suit to enforce a right to present (*t*) to or bestow (*u*) any church, vicarage, or other ecclesiastical benefice as the patron (*v*) thereof, after the expiration of such period as hereinafter is mentioned; (that is to say,) the period during which three clerks (*x*) in succession shall have held the same, all of whom shall have obtained possession thereof *adversely* (*y*) to the right of presentation or gift of such person, or of some person through whom he claims, if the times of such incumbrances taken together shall amount to the full period of sixty years; and if the times of such incumbencies shall not together amount to the full period of sixty years, then after the expiration of such further time as with the times of such incumbencies will make up the full period of sixty years.

No advowson to be recovered but within three incumbencies or sixty years.

S. 31.—Provided always, and be it further enacted,

Incumbencies after

(*r*) As by s. 34, (post,) all right arising upon or from such dormant claims becomes extinguished.

(*s*) P. 11, 100 *n*; Booth on Real Actions, 223.

(*t*) This is where the patron has a right to make a presentation of a clerk to the bishop for institution and induction; *Grendon* v. *Bishop of Lincoln*, Plowd. 499; *Rex* v. *Bishop of Landaff*, 2 Stra. 1011.

(*u*) And where it is "collative," the bishop being the patron, or donative, where the king or a subject has the entire disposal and visitation, 11 H. 4—9; and a collation by him, after six months, at twenty-eight days to the month, and within half a year, is valid; *Catesby* v. *Bishop of Peterborough*, Cro. Jac. 141, 166.

(*v*) He who has a right of patronage, Co. Litt. 17 *b*; or at least of nomination, Mo. 89; Dal. 48.

(*x*) *Paroch. Antiq.* 171.

(*y*) Where the parties do not claim under the same title, the title of one is not consistent with that of the other; and the party claiming has, in contemplation of law, been deprived of his right, and it has not been acknowledged by the other party.

lapse to be reckoned within the period, but not incumbencies after promotion to bishopricks.

that when on the avoidance, (z) after a clerk shall have obtained possession of an ecclesiastical benefice, *adverse* to the right of presentation or gift (a) of the patron thereof, a clerk shall be presented or collated thereto by his Majesty, (b) or the ordinary, (c) by reason of a lapse, (d) such last mentioned clerk shall be deemed to have obtained possession *adversely* to the right of presentation or gift of such patron as aforesaid; but when a clerk shall have been presented by his Majesty upon the avoidance of a benefice in consequence of the incumbent thereof having been made a bishop, (e) the incumbency of such clerk (f) shall, for the purposes of this Act, be deemed a continuation of the incumbency of the clerk so made bishop.

When person claiming an advowson in remainder, &c. after an estate tail shall be barred.

S. 32.—In the construction of this Act every person claiming a right to present to, or bestow any ecclesiastical benefice, as patron thereof, by virtue of any estate, interest, or right (g) which the owner of an estate tail in the advowson (h) might have barred, (i) shall be deemed to be a person claiming through a person entitled to such estate tail, and the right to bring any *quare impedit*, action, or suit shall be limited accordingly.

(z) *Weston's case*, 3 Dyer, 347 *a*.

(a) Co. Litt. 344 *a*.

(b) *The King* v. *George (Archbishop of Canterbury) and Thomas Pryit*, Cro. Car. 354.

(c) The bishop in his diocese; *Wrighton* v. *Browne*, 3 Lev. 211.

(d) Where on an omission by the patron to present a clerk, the ordinary may (*jure devoluto*) present; *Catesby's case*, 6 Rep. 61 *b*.

(e) This right in the Queen can only be exercised during the lifetime of the party so promoted; *Armagh (Archbishop)* v. *Att. Gen.* 3 Bro. P. C. 418.

(f) 13 & 14 Car. 2, c. 4.

(g) 3 & 4 Will. 4, c. 74, s. 15. *Re Wood*, 3 Myl. & Cr. 266; *Re Isaac Wood*, 2 Jurist, 201, (C).

(h) 1 Inst. 322 *b*; *The case of Fines*, 3 Rep. 85 *a*.

(i) 3 & 4 Will. 4, c. 74, s. 40; *Meath (Bishop)* v. *Winchester (Marquis)*, 3 Scott, 561; 3 Bing. N. C. 183.

S. 33.—Provided always, and be it further enacted, that after the said thirty-first day of December, one thousand eight hundred and thirty-three, no person shall bring any *quare impedit* or other action, or any suit to enforce a right to present to or bestow any ecclesiastical benefice, as the patron thereof, after the expiration of one hundred years from the time at which a clerk shall have obtained possession (*k*) of such benefice *adversely* to the right of presentation or gift of such person, or of some person through whom he claims, or of some person entitled to some preceding estate or interest, (*l*) or undivided share, (*m*) or alternate (*n*) right of presentation or gift, held or derived under the same title, unless (*o*) a clerk shall subsequently have obtained possession of such benefice on the presentation or gift of the person so claiming, or of some person through whom he claims, or of some other person entitled in respect of an estate, share, or right, held or derived under the same title.

No advowson to be recovered after 100 years.

S. 34.—At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any writ of *quare impedit*, or other action or suit, the right and title of such person to the land, rent, or advowson, for the recovery whereof such entry, distress, action, or suit respectively, might have been made or brought within such period, shall be extinguished. (*p*)

At the end of the period of limitation the right of the party out of possession to be extinguished.

(*k*) *Green's case*, 6 Rep. 29.

(*l*) 1 Inst. 322 *b*.

(*m*) As of joint tenants; *Wilson* v. *Kirkshaw*, 1 Ves. 413; 7 Bro. Parl. Ca. 296; or tenants in common; 2 Roll. Abr. 372.

(*n*) As in coparceners, *stat.* West. 2, c. 5; Bro. Ab. *tit. Quare Impedit, pl.* 118; 2 Roll. Ab. 346; 1 H. Bla. 412.

(*o*) Wats. 156.

(*p*) This means "wholly destroyed;" Bac. Abr. ii. 447; and operates thus:—If *A.* has possession of land for twenty years uninterruptedly; and then *B.* gains possession, and upon which *A.* brings an action of ejectment; even though he is the claimant, yet his former possession for twenty years will be a good title for him to recover under, because

Receipt of rent to be deemed receipt of profits.

S. 35.—The receipt of rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this Act.

Real and mixed actions abolished after the 31st December, 1834.

S. 36.—No writ of right patent, (*q*) writ of right *quia dominus remisit curiam*, writ of right *in capite*, writ of right in London, writ of right close, writ of right *de rationabili parte*, writ of right of advowson, writ of right upon disclaimer, writ *de rationabilibus divisis*, writ of right of ward, writ *de consuetudinibus et servitiis*, writ of *cessavit*, writ of escheat, writ of *quo jure*, writ of *secta ad molendinum*, writ *de essendo quietum de theolonio*, writ of *ne injuste vexes*, writ of mesne, writ of *quod permittat*, writ of formedon *in descender*, *in remainder*, or *in reverter*, writ of assize of *novel disseisin*, nuisance, *darrien-presentment*, *juris utrum*, or *mort d'lancestor*, writ of entry *sur disseisin*, in the *quibus*, in the *per*, in the *per* and *cui*, or in the *post*, writ of entry *sur intrusion*, (*r*) writ of entry *sur alienation*, *dum fuit non compos mentis*, *dum fuit infra ætatem*, *dum fuit in prisona*, *ad communem legem*, *in casu proviso*, *in consimili casu*, *cui in vita*, *sur cui in vita*, *cui ante divortium*, or *sur cui ante divortium*, writ of entry *sur abatement*, writ of entry *quare ejecit infra terminum*, or *ad terminum qui præteriit*, or *causa matromonii prælocuti*, writ of *aiel*, *besaiel*, *tresaiel*, *cosinage*, or *nuper obiit*, writ of waste, writ of partition, writ of disceit, writ of *quod ei deforceat*, writ of covenant real, writ of *warrantia chartæ*, writ of *curia clau-*

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all right in the adverse party has been tolled thereby; *Stocker* v. *Berny*, 2 Lord Raym. 741; and see *Rex* v. *Carpenter*, 6 Ad. & Ell. 794.

(*q*) Where this writ will still lie, as in the cases provided for in s. 38, the demandant must in his count allege, and by his evidence prove, a seisin in his ancestor within sixty years; *Dumsday*, dem. v. *Hughes*, ten., 3 Bing. (N. C.) 439; 4 Scott, 209.

(*r*) *Piercy*, dem. v. *Gardner*, ten., 3 Bing. (N. C.) 748; 4 Scott, 512.

denda, or writ *per quæ servitia*, and no other action real or mixed (except a writ of right of dower, (*s*) or writ of dower *unde nihil habet*, (*t*) or a *quare impedit*, (*u*) or an ejectment (*x*)) and no plaint (*y*) in the nature of any such writ or action, (except (*z*) a plaint for free bench (*a*) or dower), (*b*) shall be brought.

Except for dower, *quare impedit* and ejectment.

S. 37.—Provided always, and be it further enacted, that when on the said thirty-first day of December, one thousand eight hundred and thirty-four, any person who shall not have a right of entry to any land shall be entitled to maintain any such writ or action as aforesaid, in respect of such land, such writ or action may be brought at any time before the first day of June, one thousand eight hundred and thirty-five, in case the same might have been brought if this act had not been made, notwithstanding the period of twenty years herein-before limited shall have expired.

Real actions may be brought until the 1st June, 1835.

S. 38.—Provided also, and be it further enacted, that when, on the said first day of June, one thousand eight hundred and thirty-five, any person, whose right of entry to any land shall have been taken away by any descent

Saving the rights of persons entitled to real actions only at

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(*s*) Fitz. N. B. 17, as "where a feme is endowed of parcel of her dower, and she would demand the residue against the same tenant, and in the same town."

(*t*) 2 Saund. 43; Fitz. N. B. 346.

(*u*) A writ for the recovery of a presentation to a church where another having presented, hinders the clerk from being instituted thereon; Booth on Real Actions, 223.

(*x*) *Reg.* v. *Corporation of Buckingham*, 10 Mod. 177.

(*y*) Kitch. 231.

(*z*) Where a bill in equity is brought on such a judgment, to correct errors in it, a demurrer will be allowed, if more than twenty years has elapsed since the right to the property accrued; *Plunkett* v. *Lord Burlington*, 1 Jurist, 376, (R.)

(*a*) By custom in the manor court, where the homage is to set out and sever the dower; *Chapman* v. *Sharpe*, 2 Show. 184.

(*b*) *Shaw* v. *Thompson*, 4 Rep. 30 *b*.

the commencement of the act, &c.

cast, (*b*) discontinuance, (*c*), or warranty, (*d*) might maintain any such writ or action (*e*) as aforesaid, in respect of such land, such writ or action may be brought after the said first day of June, one thousand eight hundred and thirty-five, but only within the period (*f*) during which, by virtue of the provisions of this act, an entry might have been made upon the same land by the person bringing such writ (*g*) or action, if his right of entry had not been so taken away.

No descent, warranty, &c. to bar a right of entry.

S. 39.—No descent cast, discontinuance, or warranty, which may happen or be made after the said thirty-first day of December, one thousand eight hundred and thirty-three, shall toll or defeat any right of entry or action for the recovery of land.

(*b*) This is where the heir of the disseisor, by the descent thrown on him, 2 Bac. Ab. ii. 36, acquires the *jus possessionis*, and the disseisee cannot enter on the possession, and is put to his real action; Plow. 545.

(*c*) An alienation made or suffered by tenant in tail, or any other seised *en auter droit*, and whereby the issue in tail, or his heir or successor, or those in remainder or reversion, are driven to their action, and cannot enter; 1 Inst. 325 *a*, 332 *b*; but it does not arise on a grant without livery, nor by a grant in fee, if not with warranty; *The case of Alton Woods*, 1 Rep. 44 *b*.

(*d*) As where issue in tail is bound by the warranty contained in the fine levied by the tenant in tail; *Mary Portington's case*, 10 Rep. 37 *b*.

(*e*) In this case there is a bar only of the possessory action, *i. e.* ejectment, and not of the actions of a higher nature, and which concern the realty; Co. Litt. 393.

(*f*) In such instances it may, to save the statute, be necessary to proceed by writ of journies accounts. It must be between those who are parties to the former writ; and the new writ must be the same as the first; the time allowed is thirty days; *Elstob, Executor*, v. *Thorowgood*, 1 Ld. Raym. 283; *Kinsey* v. *Hayward*, ib. 432; 12 Mod. 571, S.C.

(*g*) Great care is requisite in attending to the law as to the proper writ. Where an estate interposes between a first taker's life estate and the remainder in fee, and being an estate tail, and not a mere estate for life, a writ of right does not lie, but a writ of *formedon in reverter*; *Dumsday*, dem. v. *Hughes*, ten., 4 Scott, 228.

S. 40.—No action, or suit, or other proceeding, shall be brought to recover any sum of money, secured by any mortgage, (*h*) judgment, (*i*) or lien, (*k*) or otherwise charged upon or payable out of any land or rent, at law or in equity, (*l*) or any legacy, (*m*) but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless, in the mean time, some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the party entitled thereto, or his agent; and in such case no such action or suit, or proceeding, shall be brought, but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one, was given.

Money charged upon land, and legacies, to be deemed satisfied at the end of twenty years, if there shall be no interest paid, or acknowledgment in writing in the mean time.

S. 41.—No arrears of dower, (*n*) nor any damages (*o*)

No arrears of

(*h*) *Marks* v. *Marks*, 10 Mod. 424; and see *post*, 1 Vict. c. 28, p. 176.

(*i*) 1 & 2 Vict. c. 110, s. 19.

(*k*) This signifies a *right* to possess and retain; *Ex parte Heywood*, 2 Rose, 355; a covenant to apply a portion of rents and profits to a particular use, gives a specific lien; *Legard* v. *Hodges*, 3 Bro. C. C. 421; 1 Ves. 477; it constitutes a special agreement for the security of the land; *Mackreth* v. *Symmons*, 15 Ves. 353.

(*l*) In a case of adverse possession, profits which a party so in possession might have realised but for his wilful default, are only allowed as against mortgagees in possession, and trustees guilty of a breach of trust; *Howell* v. *Howell*, 1 Jurist, 492, (C); 2 Myl. & Cr. 478.

(*m*) This does not extend to a suit to make an executor account for a sum of money bequeated to him by his testator, upon certain trusts, and which has been severed by the executor from the testator's personal estate, and the interest of which has for a time been applied upon the trusts of the will; *Phillips* v. *Mannings*, 2 Myl. & C. 309.

(*n*) One-third part of the lands of which the husband died seised, and *per metas et bondas*; *Lady Dowager Lindsey* v. *Lord Lindsey*, 1 Salk. 291; 3 & 4 Will. 4, c. 105; *Franck* v. *Franck*, 3 Myl. & Cr. 171; *Harrison* v. *Harrison*, 1 Keen, 765.

(*o*) Stat. of Merton, 20 Hen. 3, c. 1; 1 Rol. Ab. 573, l. 54, 574, l. 8.

dower to be recovered for more than six years.

on account of such arrears, shall be recovered or obtained by any action or suit, for a longer period than six years next before the commencement of such action or suit.

No arrears of rent or interest to be recovered for more than six years.

S. 42.—No arrears of rent (*p*) or of interest (*q*) in respect of any sum of money charged upon (*r*) or payable out of any land (*s*) or rent, (*t*) or in respect of any legacy, (*u*) or any damages (*x*) in respect of such arrears of rent or interest, shall be recovered by any distress, action, or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent: provided nevertheless, that where any prior mortgagee or other incumbrancer (*y*) shall have been in possession of any land, or in receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance (*z*) on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time (*a*) that such prior mortgagee or incumbrancer was

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(*p*) *Semble*, that this does not apply to rent by deed or indenture. See 3 & 4 Will. 4, c. 42, s. 3; *Paddon* v. *Bartlett*, 3 Ad. & Ell. 884.

(*q*) *Miltown* v. *French*, 11 Bligh, 2.

(*r*) *Graves* v. *Graves*, 8 Sim. 43; *Mirehouse* v. *Scaife*, 2 Myl. & Cr. 695.

(*s*) *Woolley* v. *Watling*, 7 C. & P. 610; *Jones* v. *Reynolds*, 4 Ad. & Ell. 805.

(*t*) *Maund* v. *Gregory*, 7 Rep. 28 b; *Goodman* v. *Packer*, T. Jones, 1.

(*u*) 1 Saund. 279, e; *Anon.* 6 Mod. 27; 2 Dyer, 151, pl. 5; *Ewer* v. *Jones*, 2 Ld. Raym. 937.

(*x*) 2 Saund. 171, b; *Holroi* v. *Ebizson*, 10 Mod. 274.

(*y*) As tenant in the nature of *elegit*, 1 & 2 Vict. c. 110, s. 11.

(*z*) Sect. 13-19.

(*a*) The service of a citation constitutes "*pendency of suit;*" *Ray* v. *Sherwood*, 1 Curt. 173.

in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years.

S. 43.—No person claiming any tithes, legacy, or other property, for the recovery of which he might bring an action or suit at law or in equity, shall bring a suit (*b*) or other proceeding in any spiritual court to recover the same, but within the period (*c*) during which he might bring such action or suit at law or in equity.

Act to extend to spiritual courts.

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3 & 4 WILL. 4, c. 42.

"*An Act for the further Amendment of the Law and the better Advancement of Justice.*"

S. 2.—And whereas there is no remedy provided by law for injuries to the real (*e*) estate of any person deceased, committed in his lifetime, nor for certain wrongs done by a person deceased in his lifetime to another in respect of his property, real or personal; (*f*) for remedy thereof be it enacted, that an action of trespass, (*g*) or trespass on the case, as the case may be, may be maintained by the executors or administrators of any person deceased, for any injury to the real estate of such person committed in his lifetime, for which an action might have been maintained by such person, so as such injury shall have been committed (*h*) within six calendar months (*i*) before the death of such deceased person, and provided such action shall be brought within one year after the death of such person, and the damages, when recovered, shall be part of the personal estate of such person; and further, that an action of trespass, or trespass on the case, as the case may be, may be maintained against the exe-

Executors may bring actions for injuries to the real estates of the deceased.

(*b*) Jacob's L. D. tit. Suit.

(*c*) As to tithes six years.

(*e*) For an injury to the person, the maxim "*actio personalis moritur cum personâ*" still applies; *Wheatly* v. *Lane*, 1 Saund. 216.

(*f*) That is, *vi et armis*.

(*g*) *The Six Carpenters* case, 8 Rep. 146.

(*h*) *Skinner* v. *Newton*, 10 Mod. 140, 168.

(*i*) This means "*next*."

And actions may be brought against executors for an injury to property, real or personal, by their testator.

cutors (*k*) or administrators of any person deceased, for any wrong committed by him in his lifetime to another in respect of his property, real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration (*l*) as the simple contract debts (*m*) of such person.

Limitation of action of debt on specialties, &c.

S. 3.—All actions of debt for rent upon an indenture of demise, all actions of covenant (*n*) or debt upon any bond or other specialty, and all actions of debt or *scire facias* upon any recognizance, (*o*) and also all actions of debt upon any award where the submission is not by specialty, or for any fine due in respect of any copyhold estates, (*p*) or for an escape, (*q*) or for money levied on any *fieri facias*, (*r*) and all actions for penalties, damages, or sums of money given to the party grieved by any statute now or hereafter to be in force, (*s*) that shall be sued or brought at any time after the end of the present session of parliament, shall be commenced and sued within the time and limitation hereinafter expressed, and not after; that is to say, the said actions of debt for rent upon an indenture of demise, or covenant or debt

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(*k*) This includes an executor *de son tort*; Rot. 81, B. R. West. 2 Dy. 166, b, n. (11); *Serle* v. *Waterworth*, 4 M. & W. 9; 6 Dowl. 684.

(*l*) *Green* v. *Salmon*, 3 N. & P. 388.

(*m*) 2 Saund. 9, n. (5); 1 Saund. 331, 336.

(*n*) *Randall* v. *Rigby*, 4 M. & W. 130; 6 Dowl. 650.

(*o*) When it has become a record by being enrolled; *Glynn* v. *Thorpe*, 1 B. & A. 153; *Buston* v. *Ridley*, 11 Mod. 223.

(*p*) The fine due to the lord is to be assessed after the admission; *Grand Junction Railway Company* v. *Dimes and another*, 2 Jurist, 886 (V. C.); *Phybers* v. *Eburn*, 3 Scott, 634; 3 Bing. N. C. 250.

(*q*) *Williams* v. *Mostyn*, 4 M. & W. 145; 2 Jurist, 663; stat. West. 2, 13 Edw. I, c. 11; 1 R. 2, c. 12.

(*r*) 2 Saund. 71 *a*.

(*s*) *Spencer* (*Earl*) v. *Swannell*, 3 M. & W. 154; 6 Dowl. 326.

upon any bond or other specialty, actions of debt or *scire facias* upon recognizance, within ten years after the end of this present session, or within twenty years after the cause of such actions or suits, but not after; the said actions by the parties grieved, one year after the end of this present session, or within two years after the cause of such actions or suits, but not after; and the said other actions within three years after the end of this present session, or within six years after the cause of such actions or suits, but not after: provided that nothing herein contained shall extend to any action given by any statute, where the time for bringing such action is or shall be by any statute specially limited.

Remedy for infants, femes covert, &c.

S. 4.—If any person or persons that is, or are, or shall be entitled to any such action or suit, or to such *scire facias*, is, or are, or shall be at the time of any such cause of action accrued within the age of twenty-one years, *feme covert, non compos mentis*, or beyond the seas, (*s*) then such person or persons shall be at liberty to bring the same actions, so as they commence the same, within such times after their coming to, or being of full age, discovert, of sound memory, or returned (*t*) from beyond the seas, as other persons having no such impediment should, according to the provisions of this act, have done; and that if any person or persons, against whom there shall be any such cause of action, is, or are, or shall be at the time such cause of action accrued, beyond the seas, then the person or persons entitled to any such cause of action, shall be at liberty to bring the same against such person or persons within such times as are before limited, after the return of such person or persons from beyond the seas.

Absence of defendants beyond seas provided for.

Proviso in case of acknowledgment in writing, or by part payment.

S. 5.—Provided always, that if any acknowledgment shall have been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, (*u*) or by part-payment, (*x*) or part-satisfaction, (*y*) on account of any principal or

(*s*) See *post*, s. 7.

(*t*) This means "first return," and in the sense explained in p. 19.

(*u*) *Morrell* v. *Firth*, 3 M. & W. 402; 8 C. & P. 246.

(*x*) *Evans* v. *Davies*, 4 Ad. & Ell. 840.

(*y*) *Irving* v. *Veitch*, 3 M. & W. 90; *Hooper* v. *Stephens*, 4 Ad. & Ell. 71.

interest being then due thereon, it shall and may be lawful for the person or persons entitled to such actions, to bring his or their action for the money remaining unpaid, and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part-payment, or part-satisfaction, as aforesaid, or in case the person or persons entitled to such action shall, at the time of such acknowledgment, be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same beyond the seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond seas, as the case may be; and the plaintiff or plaintiffs in any such action, or any indenture, specialty, or recognizance, may, by way of replication, (z) state such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea (a) of this statute.

The limitation after judgment or outlawry reversed.

S. 6.—If in any of the said actions judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, (b) writ, (c) or bill, (d) or if in any of the said actions] the defendant shall be outlawed, and shall after reverse the outlawry, that in all such cases the party plaintiff, his executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such

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(z) In such a case the replication must conclude with a verification, and issue will be tendered by the rejoinder in the negative, *Priddle and Napper's* case, 11 Rep. 10; and accepted by the surrejoinder (i. e. a *similiter*).

(a) This plea will refer to the particular period limited, see s. 3, as that "the cause of action did not accrue at any time within twenty years next before the commencement, or within ten years next before the end of the session of parliament."

(b) Kitch, 231.

(c) 2 Will. 4, c. 39, s. 1; 1 & 2 Vict. c. 110, s. 1.

(d) 2 Will. 4, c. 39, s. 19.

judgment given against the plaintiff, or outlawry reversed, and not after. (*e*)

No part of the United Kingdom, &c. is to be deemed beyond the seas, within the meaning of this Act.

S. 7.— No part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any islands adjacent to any of them, being part of the dominions of his Majesty, (*f*) shall be deemed to be beyond the seas within the meaning of this Act, or of the Act passed in the twenty-first year of the reign of King James the First, intituled "*An Act for the Limitation of Actions and for avoiding of Suits in Law.*" (*g*)

Executors of lessor may distrain for arrears in his lifetime.

S. 37.—It shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime. (*h*)

Arrears may be distrained for within six months after determination of term.

S. 38.—Such arrearages may be distrained for after the end or determination of such term or lease, at will, in the same manner as if such term or lease had not been ended or determined; provided that such distress be made within the space of six calendar months after the determination (*i*) of such term or lease, and during the continuance of the possession (*k*) of the tenant from whom such arrears become due: provided also, that all and every the powers and provisions in the several statutes made relating to distresses for rent, shall be applicable to the distresses so made as aforesaid.

(*e*) The same practice with respect to new actions brought by executors and administrators "*recently*" after the abatement of a former action, brought by the testator or intestate within the limited time, and explained in p. 30, will apply here; and so also those in p. 30, as to the removal of suits out of inferior or other courts; *Karver* v. *James*, Willes, 255; *Wilcocks* v. *Huggins*, Fitz. 170; 2 Stra. 719.

(*f*) This provision is the same as in 3 & 4 Will. 4, c. 27, s. 19; see the comments on that section in p. 19.

(*g*) C. 16.

(*h*) *Dunk* v. *Hunter*, 5 B. & A. 322.

(*i*) 1 Inst. 45, b.

(*k*) *Savage* v. *Dent*, 2 Stra. 1064.

1 Vict. c. 28.

"*An Act to amend an Act of the Third and Fourth Years of his late Majesty, for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto.*" (*l*)

Mortgagees within the definition in 3 & 4 Will. 4, c. 27, s. 1, may bring actions to recover land within twenty years after last payment of principal or interest.

It shall and may be lawful for any person entitled to or claiming under any mortgage of land, being land within the definition contained in the first section of the said Act, to make an entry, or bring an action at law, or suit in equity, to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, (*m*) although more than twenty years may have elapsed since the time at which the right to make such entry, (*n*) or bring such action, (*o*) or suit in equity, (*p*) shall have first accrued, anything in the said Act notwithstanding.

(*l*) C. 27.

(*m*) *Marks* v. *Marks*, 10 Mod. 424.

(*n*) *Rogers* v. *Humphreys*, 4 Ad. & Ell. 299.

(*o*) Debt, 1 Saund. 201 *a*, n. (*n*); covenant, 2 Saund. 107 *a*, n. (*b*).

(*p*) For foreclosure, *Upperton* v. *Harrison*, 7 Sim. 444; *Bruere* v. *Wharton*, 7 Sim. 433.

PRECEDENTS.

1. *Pleas—Pleas in Bar and Replications of the Statute....page* 177
2. *Replications—Pleading in Answer* 181
3. *Rejoinders* 185
4. *Plea in Error* 187
5. *Entry on the Roll—Issue—Postea* 190
6. *Crown Process*..... *ib.*
7. *Pleas in Courts of Equity* 191

I. PLEAS.

In the (*a*)

The (*b*) —— day of ——, in the year of our Lord, 18—.

Special plea of the statute.

C. D. ats. A. B. } The said defendant, by E. F., his attorney, says that the said causes of action (*c*) in the said declaration mentioned, did not, nor did any part thereof accrue at any time within six (*d*) years next before the commencement of this action, and this the said defendant is ready to verify.

To an action by a party grieved. (*e*)

The said defendant, by —— his attorney, says, that the said causes of action in the said declaration mentioned, did not nor did any part thereof accrue at any time

(*a*) The title of the count, R. G. Hil. 4, Will. 4, *Schedule.*

(*b*) The day of delivering the plea.

(*c*) This form will apply to all personal actions, whether *ex contractu* or *ex delicto.*

(*d*) This is the ordinary limitation; but in other cases where there is a different one, the plea must be adapted accordingly.

(*e*) 3 & 4 Will. 4, c. 42, s. 3.

within one year next after the end of the session of parliament holden in the third and fourth years of the reign of William the Fourth, late king of England, and that this action was commenced after the space of one year from the expiration of the said session; and the said defendant says, that the said causes of action did not nor did any part thereof accrue at any time within two years next before the commencement of this action; and this the said defendant is ready to verify.

No memorial enrolled within thirty days. (*f*)

The said defendant, by ——, his attorney, craves oyer of the said writing obligatory in the said declaration mentioned, and it is read to him in these words, that is to say, [*set it out verbatim,*] and he also craves oyer of the condition of the said writing obligatory, and it is read to him in these words, that is to say, [*set out the recital and condition verbatim,*] which being respectively read and heard, the said defendant says, that there was not any memorial of the said writing obligatory enrolled within thirty days next after the execution thereof in the High Court of Chancery, according to the form of the statute in such case provided; and this the said defendant is ready to verify.

To an action for arrears of rent, (*g*) and not being by deed or specialty. (*h*)

And for a further (*i*) plea the said defendant says, that the said arrears of rent did not, nor did any part thereof become due at any time within six years next before the commencement of this action; and the said defendant says, that no acknowledgment of the same in writing was ever given to the said plaintiff, or his agent, signed by the said defendant, or his agent, and that no prior mortgagee or other incumbrancer was in possession of the said premises, with the appurtenances, or any part thereof, within one year next before the commencement

(*f*) 53 Geo. 3, c. 141, s. 2; *Hickes* v. *Cracknell*, 3 M. & W. 72.

(*g*) 3 & 4 Will. 4, c. 27, s. 42.

(*h*) 3 & 4 Will. 4, c. 42, s. 3; *Paddon* v. *Bartlett*, 3 Ad. & Ell. 884.

(*i*) This is the proper expression where there is any double pleading, 4 Anne, c. 16, s. 4, 5.

of this action; and this the said defendant is ready to verify.

And as to the said trespasses above newly assigned the said defendant says, that the said causes of action in the said new assignment mentioned, did not nor did any part thereof accrue at any time within six years next before the commencement of this action; (*k*) and this the said defendant is ready to verify. **To a new assignment.**

And the said C. D., by ——, his attorney, aforesaid comes and says, that the said A. B. ought not to have her dower in this behalf as having been the wife of the said G. H., deceased; because the said C. D. says, that the said right of the said A. B. did not nor did any part thereof accrue at any time within twenty (*l*) years next before the commencement of this action; and this the said C. D. is ready to verify; wherefore he prays judgment if the said A. B. ought to have her dower of the said messuages and tenements aforesaid, with the appurtenances. **In dower.**

And as to the said avowry and cognizance the said plaintiff (*m*) says, that the said distress therein mentioned was not made at any time within twenty years next after the time when the right to make a distress for the arrears of the said annuity, yearly rent, or sum of —— pounds first accrued; and this the said plaintiff is ready to verify. **In replevin. Plea in bar.**

GENERAL ISSUES.

And the said Richard Roe, by E. F. his attorney, comes and defends the wrong and injury, when &c., and says, that he, the said Richard Roe, is not guilty of the said supposed trespasses and ejectments in the said declaration mentioned, or of any part thereof; and of this the said Richard Roe puts himself upon the country. **In ejectment.**

(*k*) The new assignment refers to this period only.

(*l*) 3 & 4 Will. 4, c. 27, s. 2.

(*m*) If there is any double pleading by the plaintiff, 4 Anne, c. 16, s. 4, add the word "*further*."

When by Statute (*n*).

In case. (By statute.)

The said defendant, by E. F. his attorney, says, that he, the said defendant, is not guilty of the said supposed grievances in the said declaration mentioned, or of any part thereof; and of this he puts himself upon the country.

In trespass.

The same form is used, but instead of "grievances," insert "trespasses."

In debt *qui tam*, or by a party grieved. By statute.

The said defendant, by E. F. his attorney, says, that he, the said defendant, does not owe the said sum of —— pounds above demanded, or any part thereof; and of this he puts himself upon the country.

Replication to a plea of set-off. (*o*)

And as to the said —— plea the said plaintiff says, that the said causes of set-off therein mentioned, did not nor did any part thereof accrue at any time within six years next before the time of pleading the said —— plea; and this the said plaintiff is ready to verify.

Ib. as to claims affected by 3 & 4 Will. 4, c. 27. (*p*)

And as to the said —— plea the said plaintiff says, that a present right to receive the said causes of set-off and every part thereof accrued to the said plaintiff; and he being then capable of giving a discharge for and a release of the same more than twenty years next before the commencement of this action; and that in the mean time no part of the said part principal money, or any interest thereon was paid, nor was any acknowledgment of the right thereto given in writing, signed by the said defendant, or his agent, to the said plaintiff, or his agent; and this he is ready to verify.

(*n*) Reg. Gen, 1 Vict. (Trin.)
(*o*) 9 Geo. 4, c. 14, s. 4.
(*p*) 3 & 4 Will. 4, c. 27, s. 34, 40.

2. REPLICATIONS.

To Pleas of the Statute.

Actio accrevit infra sex annos. (q)

And as to the said (r) plea of the said defendant, the said plaintiff says that the causes of action therein mentioned, and every part thereof, accrued within six years next before the commencement of this action, and this he prays may be inquired of by the country.

Plaintiff beyond seas.

And as to the said plea of the said defendant, the said plaintiff says that at the time when the said causes of action in the said declaration mentioned, and every part thereof, accrued he was in parts beyond the seas, that is to say, at ——, in the kingdom of ——, and that he afterwards, to wit, (s) on the —— day of ——, in the year of our Lord 18—, returned from the said parts, and which said return was his first return into this kingdom from the said parts after the accruing of the said causes of action, and of every part thereof, and that he commenced this action within six years next after his said first return, and this he is ready to verify. (t)

Defendant beyond seas.

And as to the said plea of the said defendant, the said plaintiff says that the said defendant, before and at the time when the said causes of action and every part thereof accrued, was in parts beyond the seas, that is to say, at ——, in the kingdom of ——, and that the said defendant afterwards, to wit, on the (u) —— day of ——, in the year of our Lord 18—, returned from the said parts into this kingdom, which said return of the said defendant was his first return into this kingdom from the said parts after the accruing of the said causes of action, or of any part thereof; and the plaintiff says that he commenced this action within six years next

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(q) See plea, p. 177.

(r) If to a second or third plea, adapt the replication to the particular plea.

(s) Some day about the supposed time, the exact day is not material.

(t) This being new matter must so conclude.

(u) The exact day is not material.

after the said defendant's said first return into this kingdom after the accruing of the said causes of action, or of any part thereof, and this the plaintiff is ready to verify.

Plaintiff's infancy.

And as to the said plea of the said defendant, the said plaintiff says, that at the time when the said causes of action and every part thereof accrued, he the said plaintiff was an infant within the age of twenty-one years, and that he afterwards, to wit, on the (x) —— day of ——, in the year of our Lord 18—, became of full age, and that he brought this action within six years next after the time when he the said plaintiff so became of full age as aforesaid, and this he is ready to verify.

If continuing.

And as to the said plea of the said defendant, the said plaintiff says that at the time when the said causes of action and every part thereof accrued, he was and still is an infant within the age of twenty-one years, and this he is ready to verify.

Plaintiff's coverture.

That she the said plaintiff, at the time of the accruing of the said causes of action, and of every part thereof, was the wife of one E. F., and that she continued so until and upon a certain day, to wit, the (y) —— day of ——, in the year of our Lord 18—, when the said E. F. died, and that she commenced this action within six years next after the time of the death of the said E. F., and of her becoming so discovert as aforesaid, and this she is ready to verify.

Plaintiff's imprisonment.

That at the time when the said causes of action and every part thereof accrued, he was imprisoned, to wit, in the Queen's Bench Prison, and so continued until and upon a certain day, to wit, the (y) —— day of ——, in the year of our Lord 18—, when he became and was at large therefrom, and that this action was commenced within six years next after the time of his first becoming at large as aforesaid, and this the said plaintiff is ready to verify.

(x) The exact day is not material.
(y) Ib.

If continuing.

That at the time when the said causes of action and every part thereof accrued, he was, and ever since hath remained, and still is (*z*) imprisoned, to wit, in the Queen's Bench Prison, and this the said plaintiff is ready to verify.

Accounts current in the trade of merchandize. (*a*)

That the said money in the said several promises above-mentioned wholly became due and payable on accounts current in trade had between the said plaintiff and the said defendant as merchants, and wholly concerned the trade of merchandize, and this the said plaintiff is ready to verify.

That intestate was beyond seas till his death, and that administrator commenced his action within six years from his death.

That at the time of the accruing of the causes of action in the said declaration mentioned, and of every part thereof, the said A. B. now deceased was in parts beyond the seas, and there continued until the time of his decease; and that the said plaintiff, as administrator as aforesaid, within six years next after the decease of the said A. B., commenced this action against the said defendant, and this the said plaintiff, as administrator as aforesaid, is ready to verify.

That plaintiff's testator was of unsound mind till his death, and that the action was commenced within six years.

That at the time of the accruing of the causes of action in the said declaration mentioned, and of every part thereof, the said A. B. now deceased was of unsound mind, and so continued until the time of his decease; and that the said plaintiff, as executor as aforesaid, within six years next after the death of the said A. B., commenced this action against the said defendant, and this the said plaintiff is ready to verify.

By an executor recently bringing the action after the death of testator. (*b*)

And as to the said plea, the said plaintiff says that the said defendant being indebted to the said A. B. in respect of the causes of action in the said declaration mentioned, the said A. B., for the recovery of his damages sustained by the non-performance of the said promises therein mentioned, afterwards and within six

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(*z*) *Piggott* v. *Rush*, 4 Ad. & Ell. 912.

(*a*) To this there is not any limitation; p. 3, 105, and see 21 Jac. 1, c. 16, s. 3.

(*b*) Willes, 257, *n.* (*a*).

years next after the accruing of the causes of action thereon, to wit, on the (*c*) —— day of ——, in the year of our Lord 18—, sued and prosecuted out of the Court of our Lady the Queen, before herself at Westminster, a writ of our Lady the Queen, called a summons, and directed to the said defendant, whereby he was commanded that within eight days after the service of the said writ on him, inclusive of the day of such service, he should cause an appearance to be entered for him in the said Court in an action on promises at the suit of the said A. B., and which said writ was so prosecuted as aforesaid by the said A. B. out of the said Court, with intent that the said A. B. might thereupon declare against the said defendant, and for the same (*d*) causes of action as in the declaration herein above mentioned; and the said plaintiff says that the said defendant afterwards, on the (*e*) —— day of ——, in the year of our Lord 18—, by G. H. his attorney, came into the said Court and offered himself, according to his said intent, against the said defendant in the plea aforesaid; and the said defendant also, upon the same day, appeared in the same Court, according to the tenor of the said writ, and to answer the said A. B. according to the exigency thereof; and thereupon the said A. B., according to his said intent, afterwards, to wit, on the (*f*) —— day of ——, in the year of our Lord 18—, declared against the said defendant in an action on promises of and for the same causes of action in the said declaration herein above-mentioned; and the said defendant afterwards, to wit, on the (*g*) —— day of ——, in the year of our Lord 18—, pleaded to the said declaration of the said A. B., and that the said action continued depending and undetermined until the said A. B. afterwards, and before the plea was determined, died, and thereupon the said action was wholly abated, and the said proceedings therein ceased and were and are wholly determined, dis-

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(*c*) The date of the writ of summons.

(*d*) This is material; *Behrens* v. *Sieveking*, 2 Myl. & Cr. 612.

(*e*) The date of the appearance.

(*f*) The date of the declaration.

(*g*) The date of the plea.

continued, and ended: and the said plaintiff says, that he afterwards, and within a reasonable time afterwards, and within the space of one year next after the death of the said A. B., to wit, on the (*h*) —— day of ——, in the year of our Lord 18—, for and upon the same causes of action, and for the recovery of the damages sustained by the non-performance of the same identical promises, as in the said declaration herein above-mentioned, commenced this present action, and with intent to implead and has impleaded the said defendant here in Court, for and upon the same causes of action and for the same promises, and this the said plaintiff is ready to verify.

Replication in replevin. (*i*)

And as to the said plea in bar to the said avowry and cognizance the said defendant says, that the said distress therein mentioned was made within twenty years next after the time when a right to make a distress for the said annuity or yearly rent, or sum of —— pounds, and every part thereof first accrued, and of this he puts himself upon the country.

Rejoinder to a replication to a plea of set-off. (*k*)

And as to the said replication to the said —— plea the said defendant says, that the said causes of set-off therein mentioned did accrue within six years next before the time of pleading the said —— plea, and of this the said defendant puts himself upon the country.

3. REJOINDERS.

Denial of infancy. (*l*)

And as to the said replication to the said —— plea the said defendant says, that at the time when the said causes of action and every part thereof accrued, the said plaintiff was not an infant within the age of twenty-one years, but of the full age of twenty-one

(*h*) The date of the writ of summons in the present action.
(*i*) Plea in bar, p. 179.
(*k*) Replication, p. 180.
(*l*) See replication, *ante*, p. 182.

years, and of this the said defendant puts himself upon the country.

Denial of intent. (*d*)

And as to the said replication to the said plea, the said plaintiff says, that the said writ of summons was not issued with intent, that the said plaintiff upon the appearance of the said defendant thereto should declare against him in manner and form as in the said replication alleged, and of this the said defendant puts himself upon the country.

Denial of the writ. (*e*)

And as to the said replication to the said —— plea, the said plaintiff says, that there is not any record of the said supposed writ of summons and return thereof remaining in the said Court, in manner and form as in the said —— plea alleged, and this he is ready to verify.

Action not within six years after first return. (*f*)

And as to the said replication to the said —— plea, the said defendant says that the said plaintiff did not commence this action within six years next after the said defendant's said first return into this kingdom from beyond the seas, and of this the said defendant puts himself upon the country.

That defendant did not appear. (*g*)

And the said defendant says, that he did not appear in the said Court in the said replication mentioned to answer the said A. B. according to the exigency of the said writ, and of this the said defendant puts himself upon the country.

(*d*) See replication, *ante*, p. 184.
(*e*) See the replication, *ante*, p. 184.
(*f*) See the replication, *ante*, p. 181.
(*g*) See replication, p. 184.

4. IN ERROR.

And the said A. B., by E. F. his attorney, says that by reason of any thing above for error assigned the judgment aforesaid ought not to be revoked, annulled, or held for nothing, because he says, that the writ of error herein was not sued or prosecuted out at any time within the space of twenty years next after the giving of the judgment aforesaid, and this the said A. B. is ready to verify, wherefore he prays that the said C. D. may be barred of his said writ of error, and that the judgment aforesaid may be in all things affirmed. (*i*) Plea. (*h*)

5. ENTRY ON THE ROLL. (*k*)

The (*l*) —— day of —— 18—,

England to wit, our lady the Queen sent to C. D., of (*m*) —— in the county of ——, her writ close in these words (*copy the writ of summons to the end*), and afterwards and within one calendar month next after the expiration of the said writ, including the day of such expiration on the (*n*) —— day of ——, in the year of our Lord one thousand eight hundred and ——, the said A. B., by E. F., his attorney, [*or* "in his own proper person,"] returns that the said C. D. is not found in the said county, or within two hundred yards of the border thereof, and he has not appeared to the said

(*h*) *Street* v. *Hopkinson*, 2 Stra. 1055; *Rep. temp.* Hardwicke, 345.

(*i*) This not being a joinder in error, but in avoidance of the assignment of errors, it must be signed by counsel.

(*k*) In order to save the Statute of Limitations, 2 Will. 4, c. 39, s. 10.

(*l*) The date of the writ of summons.

(*m*) The residence of the defendant as described in the writ of summons.

(*n*) The date of the entry on record.

action according to the exigency of the said writ. Therefore, by another writ of our lady the Queen, by the said E. F., as attorney for the said A. B.., [*or* "in his own proper person"] in continuation of the said writ within one calendar month next, after the expiration thereof, on the (*o*) —— day of ——, in the year of our Lord one thousand eight hundred and ——, the said C. D., thereof (*p*) ——, as before of (*q*) ——, in the said county, is commanded that, within eight days after the service of the said second writ on him, inclusive of the day of such service, he cause an appearance to be entered for him in the Court of (*r*) —— at Westminster, in an action of (*s*) ——, at the suit of the said A. B., and the said C. D. as before, was required to take notice that in default of his so doing, the said A. B. might cause an appearance to be entered for the said C. D., and proceed therein to judgment and execution, and which second writ did contain a *memorandum* indorsed thereon, [*or* "subscribed thereto"] specifying the day of the date of the said first writ.

Statement of the date of summons.

S. 6.—Issues, judgments, and proceedings in actions commenced by process under 2 Will. 4, c. 39, shall be in the several forms in the schedule hereunto annexed, or to the like effect, *mutatis mutandis*.

Form of an issue in the Queen's Bench, Common Pleas, or Exchequer.

In the Queen's Bench, [*or*
In the Common Pleas, *or*
In the Exchequer.]

The (*t*) —— day of —— in the year of our Lord, 18—.

[*Venue.*]—A. B., by E. F., his attorney, [*or* "in his

(*o*) The date of the *alias* writ of summons.

(*p*) The residence as set out in the second writ.

(*q*) The residence as set out in the former.

(*r*) In Q. B. "before the Queen herself;" in C. P. "before her justices;" and in Exch. "before the barons of her Exchequer."

(*s*) According to the nature of the action, as "of debt," "trespass," "on the case," "on promises."

(*t*) Date of declaration.

own proper person," *or* " by E. F., who is admitted by the Court here to prosecute for the said A. B., who is an infant within the age of twenty-one years, as the next friend of the said A. B.," *as the case may be,*] complains of C. D. who has been summoned to answer the said A. B., by virtue of a writ, (*u*) issued on (*x*) the —— day of ——, in the year of our Lord 18—, out of the Court, &c. (*y*)

In a writ of trial or inquiry. (*z*)

Whereas A. B. in our Court before (*y*) ——, at Westminster, on the (*a*) —— day of ——, in the year of our Lord, 18—, impleaded C. D. in an action, &c.

Postea [as to a plea of the statute.] (*b*)

And as to the said issue (*c*) within joined between the parties aforesaid: the jurors aforesaid, upon their oath aforesaid, say that the said causes of action in the said declaration mentioned did not accrue at any time

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(*u*) In proceedings under the Uniformity of Process Act, 2 Will. 4, c. 39, the writ is considered as the commencement of the action, *Thompson* v. *Dicas and another*, 2 Dowl. 93; and it must in all cases be a writ of summons, 1 & 2 Vict. c. 110, s. 2; but that act does not, nor does the above provision extend to any cause removed from an inferior court by writ of *pone, certiorari, recordari facias loquelam, habeas corpus*, or otherwise, 2 Will. 4, c. 39, s. 19. Where the date of the writ is so stated, it does not require any other proof; *Robinson* v. *Rowland*, 1 Jurist. 136, (B. C.); and where the date does not appear on the *Nisi Prius* Record, or Writ of Trial; yet the plaintiff may shew by evidence when the writ issued; *Godfrey* v. *Clements*, 1 Jurist, 22. Where the action was commenced in an inferior court, and removed, it is necessary, in order to shew the commencement of the proceedings, to prove when the plaint was actually filed there; *Ward* v. *Honeywood*, 1 Dougl. 61.

(*x*) Date of first writ.

(*y*) As in p. 188, and n. (*r*).

(*z*) R. H. 4 Will. 4; Schedule [No. 5].

(*a*) The date of the writ of summone, or of the first if more than one.

(*b*) See plea, p. 177; and replication, p. 181.

(*c*) This expression must correspond to the number of the pleas.

within six (*d*) years next before the * commencement of this action.

As to a set off. (*e*)

Down to the *, *and thus*—that the said causes of set off in the said plea mentioned, and every part accrued within six years next before the time of pleading the said plea.

6. CROWN PROCESS.

Plea of not guilty to crown process. (*f*)

In the Exchequer.

—— Term, —— Victoria.

Richard Fenn ats. The Queen. } And now, that it is to say, on the —— day of ——, in this same term, before the barons of the court of our lady the Queen, in her Exchequer, at Westminster, comes the said Richard Fenn, by ——, his clerk in court, and having heard the said information, says, that * he, the said R. F., is not guilty of the premises above laid to his charge, or of any part thereof, and of this he puts himself upon the country.

Special plea.

As far as the * *and thus*,—the said supposed offences in the said information mentioned, and thereby alleged to have been committed by the said C. D., were not, nor was any part thereof committed within —— years next before the time of exhibiting the said information; and this he is ready to verify; wherefore he prays judgment, if he ought to be any further vexed or molested in respect of the premises in the said information mentioned or any part thereof.

It is found in a certain book of orders of this Exchequer of Michaelmas Term, in the —— year of the reign of Queen Victoria, remaining in the custody of ——

(*d*) According to the particular statute, this will be applicable to the ordinary plea under 21 Jac. 1, c. 16, s. 3.

(*e*) See replication, p. 180.

(*f*) This plea will be proper in cases provided for by 21 Jac. 1, c. 14.

her Majesty's Remembrancer, (amongst other things,) as follows:— (g)

Saturday, the —— day of ——, 18—. Touching an action brought by A. B. against C. D. and E. F.

Upon the motion of her Majesty's Attorney-General, on behalf of the said A. B., informing the Court that the said C. D. were officers of excise, and that the said A. B. had commenced an action against them as such officers of excise, in her Majesty's Court of Common Pleas, as by the declaration served on them appeared: it was therefore prayed that the said action might be removed out of the said Common Pleas into the office of pleas of this Court, and be in the same *forwardness* (h) in this Court, as in the same Court of Common Pleas: on reading the affidavit of G. H., and the declaration thereto annexed, it is ordered by the Court that the said action be, and the same is hereby removed out of the said Court of Common Pleas into the office of pleas of this Court; and that the same be as forward in the said office of pleas as the same now is in the said Court of Common Pleas, and it is further ordered that the said A. B. be, and he is hereby enjoined and commanded not to proceed any further in the said action in the said Court of Common Pleas.

Vincent.

7. PLEAS IN EQUITY.

The plea of, &c.

Plea of the Statute of Limitations to a bill by an administrator for an account.

This defendant by protestation not confessing or acknowledging all or any of the matters or things in the

(g) See 4 Wentworth on Pleading, p. 539.

(h) The effect of this order places the new suit in the same situation as the former one: and the statute will be computed only to the commencement of the former; the principle is, not that this latter suit is a continuance of the former; but that the plaintiff has rightfully and legally pursued his right; and therefore it ought not to be in the power of a defendant to defeat or hinder him of a remedy, without any default; *Matthews* v. *Phillips*, 1 Salk. 425.

said complainant's said bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, to all the discovery and relief in and by the said bill sought from or prayed against this defendant, other than and except such parts of the said bill as seek a discovery of or concerning the age of E. F., in the said bill named, or a discovery whether the said E. F., out of respect or affection for the said G. F., his father, did not forbear or was not unwilling to take or use any compulsory measures for obtaining a settlement of the accounts of the matters in the said bill mentioned, this defendant doth plead in bar, and for plea saith, that by an Act of Parliament made and passed in the twenty-first year of King James the First, intituled "An Act for Limitation of Actions, and for avoiding of Suits in Law," it was enacted, &c. [*state the substance.*] (*i*) And this defendant, for further plea, saith, that if the said complainant, either in his own right or as administrator of the said L. M., deceased, or as administrator of the said personal estate of J. M., deceased, in the said bill named or otherwise, ever had any cause of action or suit against this defendant, or against the said G. F. this defendant's testator, for or concerning any of the matters in the aforesaid bill of complaint mentioned, which this defendant doth in no sort admit, such cause of action or suit did accrue or arise above six years before the filing of the complainant's bill of complaint, and above six years before serving or suing out process against this defendant to appear to and answer the same bill: and the said E. F. was not at any time, within upwards of six years before the filing of complainant's bill, or within upwards of six years before the serving or suing out process against this defendant to appear to and answer the said bill, nor hath the complainant at any time, since the death of the said E. F., been under any of the disabilities mentioned and described in the said Act of Parliament: And the defendant, for further plea, saith, that neither he, this defendant, nor to his knowledge or belief the said G. F.,

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(*i*) C. 16, s. 3; and see Ld. Red. Tr. Pl. p. 269; Beames on Pleas, p. 161, and note (4); *ib.* 15 Ves. 198; 18 Ves. 286; 19 Ves. 185.

deceased, this defendant's testator, did at any time within six years before exhibiting the said bill, or serving or suing out process against this defendant to appear to and answer the same promise, agree to come to any account for, or to pay or any ways satisfy the said complainant any sum or sums of money, for or by reason of any matters, transactions, or things, in the complainant's said bill of complaint charged or alleged; All which matters and things this defendant doth aver to be true, and is ready and willing to maintain and prove as this honourable Court shall award; and he doth plead the same in bar to the whole of the said bill, except such parts as aforesaid, and doth humbly demand the judgment of this honourable Court whether he, this defendant, ought to be compelled to make any further or other answer to such parts of the said bill as he hath pleaded unto, and this defendant not waiving or relinquishing his said plea does, for answer to such said excepted point or question, put to them in the said bill of complaint and not covered by his said plea, or to so much of such questions as he is advised is material or necessary for him to make answer unto, answer and saith he believes that the said E. F. attained his age of twenty-one years, on or about the —— day of ——, &c. and this defendant doth not know or believe that the said E. F., for any time whatsoever, forbore or was unwilling, out of respect or affection for the said G. F., his father, to take or use any compulsory measures for obtaining any settlement of the accounts in the bill mentioned. Without that, &c.

The plea of, &c.

Plea of the Statute of Limitations to so much of a bill as seeks a discovery of title-deeds, and of the defendant's title to the estates in question, supported by averments,

This defendant by protestation (see p. 191,) as to so much of the said bill as seeks to have any discovery from this defendant of all, or any, or either of the deeds, writings, evidences, conveyances, and assurances in this defendant's custody, knowledge, or power, touching or concerning the manor, rectory, lands, tenements, grounds, and hereditaments in the said bill mentioned, or the right or title thereof, or as seeks a discovery of what estate, right, title, or interest this defendant hath in or to the said premises in the said bill mentioned, this defendant doth plead thereto, and for plea saith, that by an act of

shewing an uninterrupted possession for twenty years and upwards in the defendant and the party through whom he claimed, accompanied by an answer to so much of the bill as required a discovery of the time when the party through whom the plaintiff claimed was seised of the estate.(a)

parliament made in the 4th year of the reign of King William the Fourth,(b) intituled "*An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto,*" it was enacted, that no person or persons should at any time thereafter make any entry into any lands, tenements, or hereditaments, but within twenty years next after their right or title should first descend or accrue to the same; and in default thereof, such person so not entering, and their heirs, should be utterly excluded and disabled from such entry after to be made: and this defendant doth aver, that J. L. in the said bill named, and under whom the said complainant claims title to the said premises, or any other person for his use, or in trust for him, was not, at any time within the space of twenty years next before his the said J. L.'s death, in the possession, or in the receipt of the rents or other profits of the manor, rectory, lands, tenements, grounds, and hereditaments, and other the premises mentioned in the said complainant's bill, or any part thereof: and this defendant doth likewise aver, that the said J. L. at his death left L. L. his brother and heir at law; and that the said L. L., or any person for his use, or in trust for him, was not in his lifetime, and after the death of the said J. L., in the possession or in receipt of the rents or other profits of the same premises, or any part thereof; and this deponent doth likewise aver, that the said complainant, or any person under whom he claims, or any other persons or person for his or their or any of their use, or in trust for him or them, or any of them, were not, nor was, after the death of the said L. L. to the time of filing the said complainant's bill, in the possession, or in the receipt of the rents and other profits of the same premises, or any part thereof: and this defendant doth also aver, that the said complainant, or any person under whom he claims, or any other person or persons for his or their, or any of their use, or in trust for him or them, or any of them, was not, nor were, within twenty years next before the filing of the said complainant's bill, in the possession or in the receipt of

(a) See Ld. Red. Tr. pl. 258, 271; Beames on Pleas, 161.
(b) C. 27.

the rents or other profits of the same premises, or any part thereof: and this defendant doth aver, that B. B., the grandfather of this defendant's wife, was, in the year 18—, for the space of fifty years and upwards, then last past, in the continual peaceable and uninterrupted possession and enjoyment, by himself and his tenants, of the said manor, rectory, lands, tenements, grounds, and hereditaments, and every part thereof, and continued so to be, until this defendant entered thereupon in the said year 18—, in which year this defendant entered upon the said premises; and he this defendant, from that time to the time of filing the said complainant's bill, was in the continual peaceable and uninterrupted possession and enjoyment thereof by himself and his tenants, and is now in the actual possession and receipt of the rents and profits thereof; and this defendant doth plead the said act of parliament, and such possession and enjoyment as aforesaid, to so much of the said bill as is hereinbefore pleaded to: and this defendant humbly prays the judgment of this honorable Court, whether he ought to make any further answer to so much of the said bill as is hereinbefore pleaded to: and this defendant, not waiving his said plea, but wholly relying and insisting thereon for answer to the residue of the said bill, or so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, he believes it to be true, that J. L. in the said bill named, was in and before the year 18—, and not since that year, seised or well entitled to him and his heirs in fee simple in possession of, in, and to the manor and rectory of D., and divers lands, tenements, grounds, and hereditaments thereunto belonging, and therewith held and enjoyed by the said J. L. and his ancestors, as their family estate, situate and being at D., in the county of C. Without that, &c.

INDEX.

A.

ABATEMENT, pleading in, within what time, 49.
by death of copyholder, when action must be revived, 96.

ACCOUNT, bill for, when not affected by statute of limitations, 4.
of rents and profits, how limited in equity, 72.
stated in writing, not sufficient acknowledgment, 29.
current between merchants, not affected by limitation, 3.
but it attaches when account closed, 127.
how allegation in bill of, affects pleading, 73.
mutual, when considered evidence of payment, 129.
agreement to, action on, how limited, 27.

ACCUMULATION, trust for, within what time limited, 73,

ACKNOWLEDGMENT, of title to land, by person in possession, 71, 152.
when payment of tithes sufficient, 145.
receipt of rent, by and to whom given, 71.
arrears of rent or interest, 16.
by person by whom mortgage money, &c. payable, 71.
in writing, by debtor or agent, specialties, 25, 173.
in cases of simple contract, 28, 128.
does not require stamp, 28, 130.
requisites of, 28, 128.
statute relating thereto, 127.
by payment, effect of, 25, 129, 173.
what considered a payment, 129, 130.
by one of joint contractors, &c., 27, 128.
trustee, by initials only, 72.
legal effect of, a question for the Court, 128.
when not sufficient to prevent operation of statute, 29.
general devise to pay debts, effect of, 74.

ACQUIESCENCE, by landlord, on attornment to another, 150.
what is deemed to be, 160.
by a *cestui que trust*, *ib.*
in mortgage transactions, *ib.*
cases of fraud, *ib.*

ACTION, to recover land or rent, when to be brought, 12, 144, 153.
when right to bring, first accrues, 13, 145.
mixed and personal, limitation referring to, 14.
for money secured by lien on land, 15.
on judgment debts, *ib.*
commencement of, in ejectment, 34.
commencement of, at the suit of the Queen, 5.
for infringement of patent, when notice to be given, 79.

ACT OF PARLIAMENT. *See* tit. STATUTE.
rents created by, not affected by limitation, 2.
seisin preserved to grantee, *ib.*
protecting clauses in, when they apply, 36.
limiting time for bringing actions under, to six calendar months, 37.
to six months, 38.
to three calendar months, *ib.*
to three months, 39.
to two calendar months, *ib.*

ADMINISTRATION, letters of, when delayed without default, 31.

ADMINISTRATOR, when statute begins to run, 10, 148.
title of, when it takes effect, *ib.*
within what time he may bring a fresh action, 107.

ADMIRALTY, COURT OF, suits in, what are not affected by limitation, 2.
for maritime claim, *ib.*
rights arising *super altum mare*, *ib.*
for seaman's wages, 81, 113.
disabilities affecting, *ib.*
proper mode of pleading limitation, 113.
appeal from sentence in, when to be brought, 81.

ADMISSION, of documents, when to be made, 51.
if refused, how to proceed, *ib.*

ADVOWSON, *See* tit. BENEFICE.

AFFIDAVIT, to ground capias, when to be made, 43.
when it cannot be used, 46.

AGE, of legatee, legal presumption of, 8.
what is *primâ facie* evidence of, 107.

AGREEMENT, to account, action on, how limited, 27.
to stay proceedings, how it affects supersedeas, 60.

AMENDMENT, of writ of summons, when allowed, 31.
of declaration, application, when to be made, 48.

ANCIENT DEMESNE, motion to plead, when to be made, 46.
statute of limitations extends to court of, 96.

ANNUITY, when right to distrain for, first accrues, 12, 13.
action for consideration of, when time begins to run, 27.
memorial of, when to be enrolled, 83.
statute relating to, 125.

APPEAL, to House of Lords, 74—76.
when to be brought by party under disability, 75.
within what time appellant must give security, *ib.*
mode of obtaining answer, 76.
when printed cases must be delivered, *ib.*
cross appeal, when it must be exhibited, *ib.*
to Privy Council, 77, 78.
when to be made, 77.
from the Suddur Dewanny Adawlut, *ib.*
from the Courts of Admiralty, *ib.* 78, 81.
from Ecclesiastical Courts, 81.
when it must be brought to a hearing, 78.
to Sessions, 88—90.
against poor-rate, when to be made, 89.
when grounds of appeal should be sent, 90.
against overseers' accounts, *ib.*
statute referring to, 100,
action for business done on, how limited, 26.
when time begins to run, 27.

APPEARANCE, entered by defendant, effect of, 32.
within what time, 46.
when plaintiff entitled to enter, 32, 47.
of the term in ejectment, how obtained, 43.

APPLICATIONS, to Court or judge,
under Interpleader Act, when to be made, 62.
to set aside proceedings for irregularity, *ib.*

ARTICLED CLERKS, affidavit of execution of articles, when to be made, 43.
of assignment, 44.
articles and affidavit of execution, when to be filed, *ib.*
service with agent, how limited, *ib.*
with barrister or special pleader, *ib.*

ASSUMPSIT, actions of, when to be brought, 26.
how preserved from operation of statute, 27.
within the meaning of 21 Jac. 1, c. 16, though not mentioned, 107.

ASSURANCE, possession under, when it bars remainder-man, &c. 14, 156, 157.

ATTACHMENT, writ of, when necessary, mode of issuing, 57.
when application must be made to the Court, *ib.*

ATTORNEY, certificate of, when it must be taken out, 44.
re-admission of, how limited, 45.
applications against, of a summary kind, not affected by limitation, 3.
for defect in service, when to be made, 44.
within what time he must plead, 49.

AUTHOR, rights of, in copyright, how limited, 79.

AWARDS, action upon, not being by specialty, how limited, 25.
motion to set aside, within what time limited, 54.
cannot be made on last day of term, 55.

B.

BAIL, special, when to be put in, 58, 59.
in country cases, *ib.*
justification of, what notice necessary to compel, *ib.*
notice of, when to be given, 59.
payment into Court in lieu of, *ib.*
how taken out of Court, *ib.*
summoned on *sci. fa.* when principal must be rendered, 61.
actions against, when render must be made to stay proceedings, *ib.*
staying proceedings pending writ of error, *ib.*

BAILABLE process, 57—61.

BANKRUPT, creditor becoming, effect of, 29.
act of bankruptcy under 1 & 2 Vict. c. 110,..67.
when fiat must issue, 68.
application to surrender, when to be made, *ib.*
payment of dividend after remedy barred, 28.
when not allowed, 73.

BARGAIN AND SALE, of freehold lands, when to be enrolled, 83.

BATTERY, certificate of judge that battery proved, when to be obtained, 55.

BEER-HOUSE ACT, penalty under, when to be paid, 88.

BENEFICE, right of presentation to, how limited, 12, 163, 165.
when barred, 14, 164.
when bishop may collate to, 163.
if parson non-resident, return to monition, when to be made, 81.
when he must proceed to residence, *ib.*
when bishop may remit proceeds under sequestration, *ib.*
appeal to archbishop, when to be made, *ib.*
effect of parson being again absent within twelve months, 82.
exchange of lands under 1 & 2 Vict. c. 106, when to be enrolled, 83.
when benefices are not to be disunited without consent, 84.
statute referring to, 99.

BEYOND SEAS. *See* tit. DISABILITY.
what places considered, 19, 155, 175.
debtor being so resident, 25, 113, 173.
when disability removed, *ib.*
applies to foreigners resident abroad, 113.

BILL OF DISCOVERY. *See* tit. EQUITY.

BILL OF EXCEPTIONS. *See* tit. EXCEPTIONS.

BILL OF EXCHANGE, &c., action on, within what time limited, 26.
when statute begins to run, *ib.*
delivery of, after debt barred by statute, 27.
promissory notes, statutes relating to, 112.
when limitation begins to run, *ib.*

BOND, action of debt on. *See* tit. DEBT ON SPECIALTIES.

BRAWLING, suit in Ecclesiastical Court for, how limited, 80.

C.

CAPIAS, issued by order of judge, how long in force, 33, 57.
how continued, 33.
when arrest must be made under, 57.
affidavit to ground, when to be made, 43.
when sheriff should indorse day of execution, 58.

CASE, actions on the, how affected by limitation, 23.

CASE—*continued.*
within 21 Jac. 1, c. 16, though not mentioned, 107.
for trover, what a new conversion, 24.
words actionable *per se*, how limited, *ib.*
how to prevent operation of the statute, *ib.*

CAVEAT, in Ecclesiastical Court, when it may be entered, 79.
effect of entering, 80.

CERTIFICATE of judge, that battery proved, when allowed, 55.
freehold of land came in question, *ib.*
trespass was wilful and malicious, *ib.*
as to double or treble costs, *ib.*

CERTIORARI, when plaintiff in error should sue out, 65.
for removal from inferior Court, when to be delivered, 67.

CHARITIES, not affected by statutes of limitation, 2.

CHURCH, suits for the repair of, unlimited, 3.
or right to a pew in, *ib.*
non-attendance at church, inquiry, how limited, 86.

CLAIMANT, when claim is extinguished, 9.
when limitation bars, who affected by, 13.
under disability, 17.

CLERK, in orders.
proceedings for offences by and against, when not affected by limitation, 3.

CO-CONTRACTORS, payment by representative of deceased, effect of, 28.
acknowledgment by one of, 27, 128.

COGNOVIT, affidavit of the execution of, when to be filed, 51.

COINING, indictment for possessing a die, &c., how limited, 86.
what a sufficient commencement, *ib.* 111.
statutes relating to, 111, 114.

COMMON, rights of, claims to, how limited, 19, 131.

COMPUTATION, of time, 10, 42, 47, 88.
in appeals to the sessions, 88.
when plaintiff enters an appearance under distringas, 34.
a year, 10.
a month or days, 42.
in mercantile contracts, 43.
what days are not reckoned, 42, 47.

COMPUTATION—*continued.*
when a time is specified in statute, 96.
from "an act done," 97.
what a sufficient commencement of an action, *ib.*

CONDITION, breach of, how it operates on remainder-man, 13, 147.

CONTINUANCE, notice of, when it must be given, 52.

CONUSANCE, effect of demand on replication, 31.
when it must be demanded, 47.

COPARCENERS, disability of one of several, 17, 153.
possession of one not possession of others, 151.

COPYHOLD, when claimant barred, Court will not interfere, 15.
rights of lord of manor, how affected by limitation, *ib.*
actions for fines, when to be brought, 26.
statutes of limitation apply to uses and trusts of, 67.
extend to proceedings in manor courts, 66.
exceptions, 67.
when action must be revived against heir, 96.

COPYRIGHT, in printed books, &c. how limited, 79.

COSTS, of *non pros*, when to be paid, 50.
of the day, motion for, how limited, 56.
certificate of Judge to give full costs, 55.
as to double or treble costs, *ib.*
suggestion under Court of Requests' Act, when to be made, *ib.*

COVENANT, action of, within what time limited, 24.
what disabilities suspend operation of statute, 25.
taking the case out of the statute, *ib.*

COUNTERMAND, notice of, when it must be given, 52.

COUNTY COURT, suit in, how commenced, 66.
proceedings in, how affected by limitation, *ib.*

CREDITOR, when he may bring debtor to Insolvent Court, 82.
representative of, when he may bring fresh action, 96.

CRIMINAL OFFENCES, no general statute limiting proceedings for, 5, 86.
prosecutions for particular offences limited, *ib.*

CROWN, estate tail granted by, not affected by limitation, 2.
when grant presumed, 7.

CROWN—*continued.*
commencement of proceedings at the suit of, 5.
what is deemed, 121.
claims by, within what time limited, 7, 117.
suits by, for lands out of its possession for more than twenty years, 36.
onus of proving title, 37, 104.
defendant may plead general issue, *ib.*
when Statute of Limitation may be pleaded, 106, 117.
when 9 Geo. 3, c. 16, does not apply to reversion in, 117.
returns by auditors sufficient to protect claim, 120.
statutes relating to proceedings by, 104, 117.
forms of pleadings. *See* tit. PLEADINGS.

CUSTOM, when presumed to have arisen, 6.
claims having reference to, how limited, 19.

D.

DAMAGES, in respect of arrears of rent, how limited, 16.
dower, when to be brought, 17.

DEBT on specialties, within what time limited, 24, 172.
what disabilities suspend operation of statute, 25.
mode of taking case out of the statute, *ib.*
on recognizance of bail, when bail can render principal, 61.
simple contract, when to be brought, 26, 105, 113.
what disabilities affect, 29.
operation of statute, how prevented, 27, 127.
barred by statute, how affected by general devise to pay debts, 74.

DEBTOR resident beyond seas, effect of, 25, 113, 173.

DECLARATION, within what time plaintiff must declare, 33, 48.
after an arrest or render, 59.
on removal from inferior court, 34.
when plaintiff cannot declare, *ib.* 43.
when defendant may demand, 48.
the commencement of action of ejectment, 34.
when to be served to obtain appearance of the term, 43.

DECREE for foreclosure, if heir an infant, when cause to be shown, 74.
appeal from, to House of Lords, how limited, *ib.*

DEEDS, deposit of, when not enforced as equitable mortgage, 73.

DEFAMATORY WORDS, suit in Ecclesiastical Court for, how limited, 80.
within what time issue must be joined, *ib.*

DEFEASANCE, of estate in possession, 13, 155.
rights of reversioner, &c. *ib.*

DEMAND will not prevent operation of statute, 29.
of declaration, when to be made, 48.

DEMURRER, when joinder in, must be delivered, 49.
how and when demurrer books to be delivered, 50.
in equity, when to be filed, 74.

DESCENT CAST, definition of, 168.

DETINUE, action for, within what time limited, 24.
how to prevent the operation of the statute, *ib.*

DEVISE for payment of debts, how it affects debts previously barred, 74.

DISABILITIES respecting land, what are, 18, 19.
when they prevent operation of statute, 17, 153.
in what case they do not, 99.
of one or more joint claimants, 17.
when considered to be removed, 17, 19.
in personal actions on specialties, 25, 173.
when they cease to exist, 173.
on simple contract debts, 29, 107, 173.
when defendant beyond seas, 30, 113, 173.
of one or more joint creditors, 30.
when considered to be removed, 17.
party labouring under, may bring action at once, 108.
how they affect writ of error, 63.
in equity, when party under disability may appeal, 75.
what is *primâ facie* evidence of age, 107.

DISCONTINUANCE, after plea in bar, when costs to be paid, 50.
definition of, 168.

DISTRESS, to recover land or rent, when to be made, 12, 16, 153.
right of annuitant to make, *ib.*
landlord to make, 16, 115.
within what time, 115.

DISTRESS—*continued.*
when right first accrues, 145.
when goods fraudulently removed, 116.
by executors and administrators, how limited, 16, 175.
tender of amends, when to be made, 45.

DISTRINGAS, effect of appearance entered under, by defendant, 32, 46.
when plaintiff may enter appearance, *ib.* 47.
time, how reckoned, 34.

DIVIDEND, payment of, under fiat in bankruptcy after debt barred, 28.
when not allowed in equity, 73.

DOCUMENTS, admission of, within what time to be made, 51.
if refused, mode of proceeding, *ib.*

DOWER, writs for the recovery of, 11.
within what time to be brought, *ib.*
action for arrears of, when to be brought, 17, 169.

E.

EASEMENT, definition of, 133.
claims in reference to, how limited, 20.
when suspended by disability, &c. 137.
right to, when absolute and indefeasible, 21, 133.
how affected by unity of possession, 9, 10.
a licence to use, does not give right of way, 133.

ECCLESIASTICAL COURTS, suits in, how affected by limitation, 79, 81.
what suits are not so affected, 2.
commmencement of, 80.
when issue must be joined in, *ib.*
under the canon law, how limited, *ib.*
when caveat may be entered, 79.
effect of entering, 80.
statute relating to, 100, 101.

EJECTMENT, commencement of action of, 34.
appearance of the term, how obtained, 43.
declaration in, when to be served, *ib.*
motion against casual ejector, when to be made, 34, 45.
amendment of proceedings in, 34.
what evidence may be given under general issue, 39.

EJECTMENT—*continued.*
when right of entry accrues, 45.
possession, how to be taken after verdict, 144.
actual ouster, definition of, 145.
by one tenant in common against another, 151.
when an actual ouster arises, 152.

ELECTION, when candidate must declare his qualification, 82.
within what time returning officer must certify declaration, 83.
when qualification to be delivered at table of House of Commons, *ib.*

ELEEMOSYNARY CORPORATION SOLE, right accruing to, how affected by limitation, 14, 162.

ENJOYMENT, definition of, 20.
what sufficient to bar claimants, 19.
when by consent, 20, 21.

ENROLMENT, of bargain and sale of freehold lands, 83.
of annuity for pecuniary consideration, *ib.*
of land, &c. exchanged under Benefices' Plurality Act, *ib.* 84.

ENTRY on land, to recover possession, when to be made, 12, 153.
when right to make, first accrues, 13, 145.
mere entry not to be deemed possession, 151.
no right to be preserved by continual claim, *ib.*
of cause for trial, how limited, 53.

EQUITABLE MORTGAGE, when deposit of deeds will not be enforced as, 73.
within what time mortgagor must redeem, *ib.*

EQUITY. *And see* tit. TRUSTEE.
suits in, what are not affected by limitation, 3.
concerning lands, how limited, 69, 157.
in cases of fraud, when right first accrues, *ib.*
against whom suit will not lie, *ib.* 70.
what deemed commencement of, 74.
if by the Queen, *ib.*
statement in bill of adverse possession, 72.
amendment of bill, effect of, 74.
pleading to bill of discovery, 72.
the Statute of Limitations, when valid, 73.
where bill charged a promise, *ib.*
when demurrer should be filed, 74

EQUITY—*continued.*
suits in, disabilities at law apply to, 157.
not a sufficient acknowledgment, 29.
appeal from decree, when to be made, 74.
account of tithes, within what time limited, 125.
Courts recognise acts, though not mentioned therein, 96.
forms of pleas, 191, 193.

ERROR, writ of, to reverse judgment, when to be brought, 63.
how affected by disabilities, *ib.*
how obtained when bill of exceptions tendered at trial, *ib.*
bail in, when a supersedeas of execution, *ib.*
allowance of, *ib.*
when limitation must be pleaded to assignment of, 64.
transcript must be prepared and examined, *ib.*
plaintiff in error must assign, *ib.*
in House of Lords, 65.
within what time defendant must plead, 64.
form of prayer of judgment, 65.
when paper books must be delivered to Judges, *ib.*
by whom, *ib.*
when plaintiff in the House of Lords may sue out *certiorari*, *ib.*
mode of proceeding thereon, *ib.*
must deliver printed cases, 66.
statute relating to, 111.
form of plea, 187.

ESCAPE, action for, on final process, when to be brought, 26.

ESTRAY, when forfeited for non-claim, 82, 91.

EVIDENCE, requisites of acknowledgment to make it, 28, 29.
admission of documents, when to be made, 51.

EXCEPTIONS, bill of, what necessary before suing out writ of error, 63.

EXCHEQUER, removal of revenue suit into, 31.

EXECUTION, motion to issue execution against former member of trading association, 56.
not issued within a year after final judgment, effect of, 57.
when defendant must be charged in, 60.

EXECUTOR, action against for injury committed by deceased, 23, 172.
by, for injury to real estate of testator, 22, 171.

EXECUTOR—*continued.*
action by executor of executor, how limited, 30.
when he may distrain for arrears of rent, 16, 175.
within what time he may bring a fresh action, 107.
title of, when it takes effect, 148.

EXTENT, when proceedings commenced, 5.

F.

FACTORS, actions on accounts between them and merchants unlimited, 3.

FELO-DE-SE, when party must die to constitute, 87.

FEME COVERT. *See* tit. DISABILITY.

FIERI FACIAS, actions for monies levied on, how limited, 26.

FORECLOSURE, when cause must be shown against decree by infant, 74.

FOREIGN JUDGMENT, action on, when to be brought, 26.
will not prevent operation of statute, 29.

FORFEITURE, right of entry by reason of, 13, 147.
remainder-man, how affected by, *ib.*
of copyhold estate, lord of the manor, how affected, 15.
under penal statute, actions for, when to be brought, 31.
when limited to Queen, 86.
to Queen and prosecutor, 87.

FORNICATION, suit in Ecclesiastical Court, how limited, 80.

FRANCE, law of prescription, 9.

FRANCHISE, when Queen may claim her, 4.
conusance of plea by owner of, when to be made, 47.

FRAUD, in cases of, when right in equity first accrues, 69, 159.
against whom suit will not lie, *ib.* 70.
what is, 70.
effect of notice being given, 159.
acquiescence in, what considered, 70, 160.
remainder-man, how affected by fraudulent sale, 158.

FREEHOLD, certificate of Judge, that it came in question, 55.

G.

GAMING, money lost by, when it may be recovered, 115.

GENERAL ISSUE, when it may be pleaded and special matter given in evidence, 37.
when the words "by statute" must be inserted in margin, *ib.*
in ejectment, what evidence may be given under, 39.

GOODS, delivery of, on account, after remedy barred, 28.

GRANT from the crown, when presumed, 7.
claims having reference to, how limited, 19.

H.

HACKNEY CARRIAGES ACT, complaint under, within what time limited, 87.

HEIR, when infant, must show cause against foreclosure, 74.

HERIOT, Queen's claim to, not affected by limitation, 4.
And see tit. RENT.

HIGH TREASON, indictment for, when to be prosecuted, 86, 110.

HOUSE OF LORDS, when plaintiff in error must assign, 65.
may sue out certiorari, *ib.*
printed case, when to be delivered, 66, 76.
appeal from decree in equity, how limited, 74.
any court in Scotland, &c. *ib.*
when party under disability may appeal, 75.
when appellant must give security, *ib.*
when respondent must answer, and mode of obtaining, 76.
cross appeal, when to be exhibited, *ib.*

I.

IDIOT. *See* tit. DISABILITY.
who is an idiot, 18.
when incapacity ceases, *ib.*

IMPRISONMENT, continuance of, deemed a fresh one, 23
of plaintiff. *See* tit. DISABILITIES, (simple contract.)
not a disability under 3 & 4 Will. 4, c. 27, nor 3 & 4 Will. 4, c. 42.. 153, 173.

INCONTINENCE, suit in Ecclesiastical Court for, how limited, 80

INCUMBRANCER, action by, what arrears he may recover, 16.

INDICTMENT, for high treason, how limited, 86
possessing die, &c. for coining, *ib.*
what a sufficient commencement, *ib.*
on penal statute, when to be brought, *ib.* 87.

INFANT. *See* tit. DISABILITIES—MORTGAGE.

INFERIOR COURT, on removal from, when plaintiff must declare, 34, 97.
when defendant may rule plaintiff to declare, 48.
replication to plea of statute must set out process, 41.
not of record, proceedings in, 66, 67.
commencement of suit, 66.
Manor Courts, how affected, *ib.*
to what statute does not extend, 67.
when rights of lord extinguished, *ib.*
process of, evidence of pendency of suit, *ib.*
of record, when process of removal must be delivered, *ib.* 109.
statute relating to removal, 103, 108.

INFORMATION, on penal statute, when to be brought, 31.
what deemed commencement of, 102.
when the penalty vests, *ib.*
statutes relating to, 101, 110.
ex officio, within what time limited, 85.
when against a magistrate, *ib.*
within what time prosecutor must proceed to trial, *ib.*
in the nature of a *quo warranto*, defendant may plead statute, *ib.*
statute relating to information of intrusion, 104.
when *onus* of proving title lies on the crown, *ib.*

INSOLVENT, petition to Insolvent Court, how it affects supersedeas, 60.
when it must be presented, 82.
when prisoner may be brought up by creditor, *ib.*

INSTITUTION, no lapse, if Queen does not present, 4.

INTEREST, on judgment debts, when action must be brought for, 15.

INTEREST—*continued.*
arrears of, on legacy, limitation of action for, 16, 170.
not affected by payment into Court of principal only, 28.

INTERPLEADER ACT, applications made by defendant, when to be made, 61.
by sheriff, how limited, 62.

INTESTACIES, suit in Ecclesiastical Court respecting, unlimited, 2.

J.

JAMAICA, Statute of Limitations, operation of, 9.

JERSEY, law of limitation, *ib.*

JOINDER in demurrer, when to be delivered, 49.

JOINT CREDITORS, when limitations suspended, 30.
subsequent disability of, *ib.*

JOINT DEBTORS, effect of payment by one of, 27, 129.

JOINT DEFENDANTS, entering nolle prosequi to one or more, 53.

JOINT TENANTS, possession of one not to be possession of others, 151.

JOURNEY'S ACCOUNTS, writ of, when to be sued out, 11.
must be between parties to former writ, 168.

JUDGMENT as in case of a nonsuit, when to be moved, 52.
non obstante veredicto, motion for, when to be made, 53.
when to be entered on death after verdict, 55.
signed and no execution issued within a year, effect of, 57.
where more than ten years old, *ib.*
debts, actions on, when to be brought, 15.
reversed or arrested, when new action to be brought, 30, 106, 174,
writ of error to reverse, when to be brought, 63.

JUSTICE, tender of amends by, when to be made, 45.
information against, within what time limited, 85.
complaints before, for small tithes, how limited, 87.
under Hackney Carriages Act, *ib.*
order of, for payment of special constables, when to be paid, *ib.*

JUSTICE—*continued.*
penalty under Beer House Act, when to be paid, 88.
statute relating to, 117.

L.

LAND, definition of, 142.
limitation of actions for the recovery of, 12, 21, 144.
when right deemed to have first accrued, 12, 145.
in case of tenancy at will, 12, 148.
from year to year, 12, 14, 150.
under lease, *ib.*

LANDLORD, distress by, 16, 115.
within what time to be made, 115.
when right first accrues, 145.
executors or administrators, how limited, 16, 175.

LAPSE, how to bar presentation by, 11.
none arises if Queen omits to present, 4.

LEASE, in writing, where rent 20*s.*, when limitation begins to run, 14.
when rent under 20*s.* *ib.*
adverse receipt of rent immaterial, 150.
right of entry at determination of lease, *ib.*

LEAVE AND LICENSE, effect of shewing, 20.

LEGACY, suit in Ecclesiastical Court for, how limited, 81, 171.
when to be deemed satisfied, 169.
suit for legatee to refund, not affected by limitation, 3.

LETTER, acknowledgment by, effect of, 28.
construction of, 29.

LIBERTIES, when Queen may claim, 4.

LIENS, personal, not affected by Statutes of Limitation, 2.
money secured by, on land, how affected, 15.
on partnership assets, when Courts of Equity will not enforce, 73

LIFE, legal presumption of, 8, 146.

LIGHT, claims to the use of, when to be made, 21.
how affected by disabilities, 137.
enjoyment of, when indefeasible, 21, 134.
interruption with notice, *ib.* 135.

LIGHT—*continued.*
when privilege is taken away, 134.
what necessary in plea of user, 135, 136.
to what 2 & 3 Will. 4, c. 71, does not apply, 134.

LIMITATION, general definition, 1.
to the time of making claims at common law, *ib.*
how it arises, 5.
extends to legal and equitable claims, 6, 96.
and to inferior Courts, 96.
what suits in equity are exempted from operation of, 4.
when it attaches, 9.
to claimant, who are affected by, 13.
where it affects the remedy only, 22, 106, 127.
mode of relying on, 6.
does not generally affect criminal offences, 86.
what it does not affect, 1.
third persons not affected thereby, 5.
nor copyholders suing to lord on error for false judgment, 67.
applies to uses, &c. of copyhold estates, *ib.*
when it begins to run, 10, 17, 30.
against a foreigner, 30, 113.
not stopped by subsequent disability, 17.
when it has run out, effect of, 96, 165.
operation of, how suspended, (ex delicto,) 24.
on specialty, 25.
on simple contract, 27.
what a sufficient commencement of action, 97.
when to be relied on by plea, 39.
forms of pleas, 177—190.
mode of pleading, its conclusion, &c. 40.
requisites of replication to plea of the statute, *ib.*
plea of, when valid in equity, 73.
may be given in evidence under *nil debet* in penal actions, 103.
of rights in foreign countries, 8.
when right extinguished, *ib.*

LORD OF THE MANOR, rights of, affected by limitation, 15.

LUNATIC. *See* tit. DISABILITIES.
who considered, 18.
when disability removed, *ib.*

M.

MANOR COURT, proceedings in, how affected by limitations, 66.
what proceedings not affected by, 67.

MARITIME CLAIMS. *See* tit. ADMIRALTY.

MERCHANT, accounts current in the trade of, 3.
how allegation of, in bill affects plea, 73.

MISNOMER, application to amend declaration for, when to be made, 48.

MONEY, secured on land, actions for, when to be brought, 15.
when to be deemed satisfied, 169.
arrears of, how limited, 16.

MORTGAGE, redemption of, how affected by limitation, 69, 176.
when infant mortgagor must redeem, 73.
equity of redemption, when it arises, 71.
how treated by Courts of Equity, *ib.*
how affected by limitation, 161.
on forfeiture of, mortgagor no legal interest, 149.
acquiescence in mortgage transaction, effect of, 160.
equitable, when deposit of deeds will not be enforced, 73.
within what time mortgagor must redeem, *ib.* 160.

N.

NEGLIGENCE, action for, when statute begins to run, 27.

NEW TRIAL, motion for, when it must be made, 53.
must be made before arrest of judgment, 54.

NOLLE PROSEQUI, against one of several defendants, when to be entered, 53.

NON COMPOS MENTIS. *See* tit. DISABILITIES.

NON PROS, after discontinuance to prevent, when costs to be paid, 50.
to writ of error, when defendant in error may sign, 64.

NON RESIDENCE, when parson must make return to monition, 81.
proceed to residence, *ib.*
bishop may remit part of sequestration, *ib.*
appeal to archbishop, how limited, *ib.*
absenting again within twelve months, 82.

NONSUIT, motion to set aside, and enter a verdict, when to be made, 53.

O.

OFFICES, with fees and profits,
within what time to be proved, 7.
right of presentation to, when barred, 14.

OUSTER, what is deemed an actual ouster, 145, 152.

OUTLAWRY, reversed, when new action may be brought, 30, 106, 174.

OYER, when plaintiff craves, within what time it must be given, 49.

P.

PALACE COURT, commencement of suit in, 66.

PAROL STATEMENT, will not suspend operation of statute, 29.

PARTICULAR ESTATE, defeasance of, rights of reversioner, &c. 13.

PARTIES, affected by Statutes of Limitation, 5.

PARTNERSHIP ASSETS, when lien on, cannot be enforced, 73.

PARTY GRIEVED, actions by, when to be brought, 26, 36, 172

PATENT, when specification must be enrolled, and where, 78.
application for extension of term, when to be made, *ib.*
what further time it may be granted for, 79.
in action for infringement, when notice of objections to be given, *ib.*
proceeding by *scire facias* to repeal, *ib.*

PAYMENT, of rent under lease in writing, 14.
by tenant from year to year, *ib.*
part payment, legal definition of, 72.
in part satisfaction of specialties, 25.
in cases of simple contract, 27, 129.
after statute barred remedy, *ib.*
generally on account after debt barred, 28.
mutual accounts, when evidence of, 129.
transfer of stock, effect of, 130.
into Court of principal only, 28.
proceedings after payment into Court, 49.
in lieu of special bail, 59.
when bail may be put in after, *ib.*

PEERAGES, not affected by Statutes of Limitation, 1.

PENALTY, action for, commencement of, 5.
when it must be brought, 31, 101, 102.
when the penalty vests, 102.
not affected by new rules of pleading, 37, 103.
statute relating to, 101.
under Beer House Act, when to be paid, 88.

PENSION, suit for, not affected by limitation, 2.

PERMISSION to occupy, effect of, 12.

PERSONAL ACTIONS, 22—35. *See* tit. DEBT—DETINUE—TRESPASS, &c.
statutes relating to limitation of, 105, 127, 130.

PETTY BAG OFFICE, commencement of proceedings in, 5, 66.

PLEADING, when it cannot be delivered, 43.
within what time defendant must plead, 49.
when defendant may plead general issue, 36, 37.
in suits by the crown, 37.
in ejectment, 39.
when the statute must be specially pleaded, 6, 39.
mode of, its conclusion, &c., 40.
if informal, when deemed sufficient, 106.
user, what is requisite in plea of, 135, 136.
puis darrein continuance, mode of, 50.
rule to plead several matters, when required, 40.
the statute in equity, 73, 74.
forms of,
PLEAS,
Statute of Limitations, 177.
to an action by party grieved, *ib.*
no memorial enrolled within thirty days, 178.
to an action for arrears of rent not by deed, *ib.*
to a new assignment, 179.
in dower, *ib.*
in replevin, *ib.*
in ejectment, *ib.*
when "by statute,"
in debt, *qui tam*, 180.
in error, that writ not sued out within twenty years, 187.
to crown process, not guilty, 190.
special plea, *ib.*
order of removal into Exchequer, *ib.*

PLEADING—*continued.*
FORMS OF—*continued.*
REPLICATIONS, to plea of set-off, 180.
to claims affected by 3 & 4 Will. 4, c. 27, *ib.*
actio accrevit infra sex annos, 181.
that plaintiff was beyond seas, *ib.*
that defendant was beyond seas, *ib.*
plaintiff's infancy, 182.
if continuing, *ib.*
plaintiff's coverture, *ib.*
imprisonment of plaintiff, *ib.*
if continuing, 183.
merchant's accounts current, *ib.*
intestate beyond seas till death, *ib.*
that plaintiff's testator was under disability till death, *ib.*
by an executor, action recently after testator's death, *ib.*
in replevin, 185.
REJOINDERS, to replication to plea of set-off, 185.
denying infancy, *ib.*
denial of intent, 186.
the writ, *ib.*
that action not within six years from first return, *ib.*
that defendant did not appear, *ib.*
ENTRY ON THE ROLL, 187.
ISSUE IN SUPERIOR COURTS, 188.
WRIT OF INQUIRY, 189.
POSTEA, *ib.*
as to a set-off, 190.
IN EQUITY,
PLEAS, of the statute to a bill for an account, 191.
of discovery, 193.

POSSESSION, when it raises presumption of grant from the crown, 7.
must be peaceable, to give right by prescription, 8.
defeasance of estate in, 13.
unity of, what it extinguishes, 9.
and what not, *ib.* 10.
when possession is adverse, 153.
when it must be actual, and not constructive, 15, 151.
of one incumbrancer, how it affects subsequent one, 16.
of one joint tenant, &c. not possession of others, 151.
of younger brother not that of heir, 152.
tenant at will quitting after adverse possession, 149.

POSTHUMOUS HEIR, when statute commences running, 10.

PRESCRIPTION, what presumed to be, 6, 132.

PRESCRIPTION—*continued.*
when a grant from the crown is presumed, 7.
must be uninterrupted, 8.
of no avail against a plain statutory enactment, 132.
positive and negative, 8.
how right may be acquired, 138.
claims having reference to, how limited, 19, 132.
how destroyed, 132.
right cannot be established by presumption, 136.
statutes relating to, 131, 138.

PRESENTATION, no lapse because the Queen does not present 4.
right of Queen to, on preferment to bishopric, 7.
when to be exercised, 8.
how barred by lapse, 11.
how affected by limitation, 12.
statute relating to, 99.

PRIVY COUNCIL, appeal to, within what time limited, 77.
from the Suddur Dewanny Adawlut, *ib.*
from Courts of Admiralty, *ib.* 78.
when it must be brought to hearing, *ib.*

PROCEEDINGS AT LAW, 42—68.

PROMISSORY NOTE. *See* tit. BILL OF EXCHANGE.

PROSECUTIONS not affected by Statutes of Limitation, 2, 5, 86.
except for particular offences, 86.

PUIS DARREIN CONTINUANCE, mode of pleading, 50.

Q.

QUALIFICATION of candidates at election, when to be declared, 82.
when officer must certify declaration, 83.
when member must deliver statement of, *ib.*

QUARE IMPEDIT, time for bringing writ, how limited, 11.
in case of abatement, how continued, *ib.*
origin of writ, 100.
effect of nonsuit after appearance, *ib.*

QUEEN. *And see* tit. CROWN.
not affected by statute unless expressly named, 4.
claim to franchises, heriots, &c. may be made at any time, *ib.*

QUEEN—*continued.*
wreck of her goods not affected by non-claim, 4, 82, 99.
no lapse on her non-presentment, 4.
may bring suit at any time against her accomptants, 5.
or their representatives, *ib.*
proceedings by, for penalties, when commenced, 5, 102.
within what time, 7, 102.

QUIT RENTS, not affected by Statutes of Limitation, 2.

QUO WARRANTO, defendant may plead, and rely on statute, 85.
from what time limitation reckoned, 124.
statute relating to, *ib.*

R.

REAL ACTIONS, abolition of, 166.
what now remain, 11, 167.
within what time they must be brought, 167.

REAL PROPERTY, claimant to, what he must possess, 144.
action to recover possession of, how limited, 12.
statutes relating to, 142, 176.

RECEIPT of profits by prior incumbrancer, effect of, 16.
of rents, to be deemed receipt of profits, 166.

REJOINDER, when defendant must deliver, after rule, 50.
under terms to "rejoin gratis," *ib.*
for forms of, *see* tit. PLEADING.

REMAINDER-MAN, rights of, how affected by forfeiture, 13, 147.
when they first accrue, *ib.*
after fraudulent sale by tenant in tail, 158.
barred, when tenant in tail is barred, 13, 156.
by possession, under an assurance, 14, 156, 157.
possession adverse to tenant in tail runs on against, 156.

RENT, definition of, 143.
when created by act of parliament, not affected by statute, 2.
nor quit rents, *ib.*
action for the recovery of, when to be brought, 12, 144.
when right deemed to have first accrued, 12, 145.
received under lease in writing, 14.

RENT—*continued.*
tenancy from year to year, 14.
arrears of, action for, how limited, 16, 170.
when executor must distrain for, 16, 175.
action of debt for, *see* tit. DEBT ON SPECIALTIES.
statutes relating to, 114, 116, 142.

REPLEADER, motion for, when to be made, 53.

REPLEVIN, plaints of, within what time limited, 24.
when removed to superior Court, 30.
rule to declare, when to be obtained, 48.
replication when proceedings should be set out, 31.
rule for special jury in, when to be obtained, 51.
how to prevent the operation of the statute, 24.

REPLICATION, when special matter must be replied on specialty, 25.
in replevin, 31.
to plea of set-off, barred by statute, 35.
Statute of Limitations, its conclusion, &c., 40, 41.
when it sets out the process, 41.
when conusance is demanded, 31.
when plaintiff must deliver after rule, 50.
for forms of, *see* tit. PLEADING.

REPRESENTATIVE of deceased co-contractor, effect of payment by, 28.
within what time he may issue process, 30.
executor of, how affected, *ib.*

REVENUE, removal of suit concerning, into Exchequer, 31.
when to be brought there, 97.

REVERSIONER, rights of, how affected by breach of condition, &c. 13, 147.
when they first accrue, 13, 148.
when estate in possession barred, how affected, 155.

REVIVOR, suit of, not affected by limitation, 4.

RIGHT of presentation, *see* tit. PRESENTATION, LAPSE, &c.
of way, when absolute and indefeasible, 21, 133.
how affected by unity of possession, 9.
claims in respect of, how limited, 20.
disability, how it affects, 137.
how defeated, 21, 134.
when it is not defeated, 134.
of common, action for, when to be brought, 19.

ROLL, entry on, form of, 187.

S.

SCIRE FACIAS, to repeal letters-patent, when notice to be given, 79.
upon recognizance, when to be brought, 25.
disabilities affecting, *ib.*
how taken out of the statute, *ib.*
if judgment more than a year old, must proceed by, 57.
more than ten years old, how obtained, *ib.*
bail summoned upon, when they must render principal, 61.

SCOTLAND, limitation there, 8.

SEAMAN'S WAGES, suit in Admiralty Court for, how limited, 81.
what disabilities affect, *ib.*
appeal from, when to be brought, *ib.*
statute relating to suits for, 113.

SEISIN of homage, &c. 6.
what it includes, *ib.*

SERVICES, Queen's claim to, not affected by limitation, 4.
when seisin of superior includes inferior, 6.

SESSIONS, appeals to, computation of time, 88.
when certiorari may be applied for, *ib.*
under Vagrant Act, when to be made, 89.
Dean's Forest Mines Act, *ib.*
Custody of Insane Person's Act, *ib.*
New Poor Law Amendment Act, *ib.*
against poor rate, *ib.*
grounds of appeal, when to be sent, 90.
against overseer's accounts, *ib.*

SET-OFF, when barred by statute, 35, 130.
mode of replying to plea of, *ib.*
forms of replications, 180.

SEVERAL DEFENDANTS, one or more not affected by limitation, verdict, &c. 41.

SEVERAL MATTERS, rule to plead, when required, 40.
how obtained, *ib.*

SHERIFF, actions for monies levied by, how limited, 26.
when he must be ruled to return the writ, 57.
within what time he must indorse day of execution, 58.

SIMPLE CONTRACT DEBT, action on, within what time to be brought, 26.
disabilities affecting, 29.
taking case out of operation of statute, 27.

SLANDER, action for, when it must be brought, 24.
how to prevent operation of statute, *ib.*

SPECIAL CONSTABLES, order of justices for remuneration, when to be paid, 87.

SPECIAL JURY, rule for, in replevin, when it must be obtained, 51.
in London and Middlesex, when to be served, &c. *ib.*
in country causes, when to be summoned, 52.

SPECIALTY, action on, when to be brought, 24.
disabilities affecting, 25.
how taken out of the operation of statute, *ib.*
contract without, how affected by statute, *ib.*, 26.

SPIRITUAL CORPORATION SOLE, rights of, how affected by limitation, 14, 162.

STATUTE, mode of passing, 92.
on parliament roll is without points, *ib.*
construction, 91—98.
cannot cease to be obligatory by disuse, 92, 132.
when it takes effect, *ib.*
title of, and preamble, effect of, *ib.*
proviso in, operation of, 93, 136.
effect of subsequent general words on, 94.
when it must be noticed in declaration on penal statute, 93.
when it must be pleaded, 98.
words without legal meaning, and terms of art, how construed, 94.
mode of elucidating obscurity in, 92.
affirmative and negative words in, 93.
protecting clause in, when it applies, 36.
mode of construing several acts on same subject, 93, 95.
when Queen is and is not bound by, 94.
assisted by the common law, 95.

STATUTE—*continued.*
when it has a retrospective operation, 95.
reviving or continuing act, operation of, *ib.*
substitution of other provisions for a limited time, *ib.*
effect of repeal, 96.
may be repealed by implication, 95.
when Courts of Equity not mentioned, 96.
computation of time, *ib.*, 97.
when from an "*act done,*" 97.
when Courts define what is the commencement of action, 101.
directing a mode of procedure, it must be adopted, 97.
how it must be pleaded, 98
giving accumulative damages not penal, 102.
3 Edw. 1, c. 4..99.
13 Edw. 1, c. 5, (Westminster 2nd), *ib.*
24 Hen. 8, c. 12..100.
23 Eliz. c. 1..101.
31 Eliz. c. 5..*ib.*
43 Eliz. c. 5..103.
21 Jac. 1, c. 14..104.
21 Jac. 1, c. 16..105.
21 Jac. 1, c. 23..108.
4 & 5 Will. 3, c. 18..110.
7 Will. 3, c. 3..*ib.*
7 & 8 Will. 3, c. 6..111.
8 & 9 Will. 3, c. 26..*ib.*
10 & 11 Will. 3, c. 14..*ib.*
3 & 4 Anne, c. 9..112.
4 Anne, c. 16..113.
7 Anne, c. 25..114.
8 Anne, c. 14..*ib.*
9 Anne, c. 14..115.
11 Geo. 2, c. 19..116.
24 Geo. 2, c. 44..117.
9 Geo. 3, c. 16..*ib.*
32 Geo. 3, c. 58..124
53 Geo. 3, c. 127..125
53 Geo. 3, c. 141..*ib.*
9 Geo. 4, c. 14..127.
2 Will. 4, c. 39..130.
2 & 3 Will. 4, c. 71..131.
2 & 3 Will. 4, c. 100..138.
3 & 4 Will. 4, c. 27..142.
3 & 4 Will. 4, c. 42..171.
1 Vict. c. 28..176.

SUGGESTION, under Court of Requests' Act, when to be made, 55.

SUMMONS, WRIT OF, commencement of the action, 41.
prevents the operation of the statute, 31.
even though informal, *ib.*
amendment of, on what terms, 31, 32.
effect of resealing, when informally issued, 32.
service of copy on defendant, *ib.*
if not served must be continued, 33.
how long in force, *ib.*, 46.
statute relating thereto, 130.
time limited for defendant to pay debt, &c. indorsed, 46.
indorsement of service, when to be made, *ib.*
irregularity in, when to be taken advantage of, *ib.*

SUPERSEDEAS, when defendant entitled to, for not proceeding to trial, 60.
not entitled to, *ib.*
once supersedable always so, 61.
when bail in error operates as, 63

SURETY, action by, against principal, when statute begins to run, 27.

SURVIVOR, how affected by payment by representative of co-contractor, 28.

T.

TENANCY IN COMMON, possession of one tenant, effect of, 151.
ejectment by one tenant against another, *ib.*
when an actual ouster will arise between, 152.

TENANT, in tail, assurance by claim under, when barred, 14.
from year to year, when limitation begins to run, *ib.*, 150.
at will, when right first accrues, 14, 149.
effect of, quitting possession, 149.
determination of the will, *ib.*

TENDER, must be made before issuing the writ, 45.

TESTAMENT. *See* tit. WILL.

TIME,
computation of, a year, 10.
a month, days, 42.
mentioned in statute, 96.
when from an "*act done*," 97.
in mercantile contracts, 43.
what days are not reckoned, 42, 47.

TIME, computation of,—*continued.*
commencement of action, what sufficient, 97.
when plaintiff enters appearance under distringas, 34
in appeals to the sessions, 88.
immemorial, legal definition of, 6.
of service of legal proceedings, 43.

TITHES, suit in Ecclesiastical Court for, how limited, 81, 171.
complaints before justice for small tithes, &c., 87.
statutes relating thereto, 111, 125.
modus in lieu of, must be as certain and durable as tithe, 138.
what prescription, &c. to be valid, *ib.*
what compositions to be deemed valid, 140.
effect of disabilities, 141.
statute relating to, 138.
account of, in equity, how limited, 125.
when non-payment of, does not raise presumption of grant, 138.

TITLES OF HONOUR, not affected by Statutes of Limitation, 1.

TRADING ASSOCIATION, execution against former member of, how limited, 56.

TREASON, within what time party to be prosecuted for, 86.
exception, *ib.*
statute relating to prosecution for, 110.

TRESPASS, actions for, within what time to be brought, 22, 23.
to real estate of deceased, by representative, *ib.*
how limited, 23.
how to prevent operation of the statute, 24.
continuance of imprisonment, effect of, 23.
promise to make compensation, 24.
tender of amends, when to be made, 45.
wilful and malicious, certificate of, when obtained, 55.

TRIAL,
proceedings for, judge's order for writ of trial, 52.
judgment in case of a nonsuit, when moved for, *ib.*
notice of countermand, when to be given, *ib.*
continuance, *ib.*
when *nolle prosequi* should be entered, 53.
entry of a cause for, how limited, *ib.*
proceedings after, motions for nonsuit, new trial, &c. when to be made, 55.
certificate of judge to give full costs, when made, *ib.*
as to double and treble costs, *ib.*
suggestion under Court of Requests' Act, *ib.*

TRIAL, proceedings after,—*continued.*
motion for costs of the day, how limited, 56.
when judgment should be entered on death of plaintiff, &c., 55.
on warrant of attorney, 56.
when plaintiff must proceed by *sci. fa.*, 57.

TROVER. *See* tit. CASE.
how to prevent operation of the statute, 24.
when time begins to run, 106.
included in 21 Jac. 1, c. 16, though not mentioned, 105.

TRUSTEE, suits against, when not affected by limitation, 3.
when not allowed, 158.
acknowledgment by, though by initials only, 72.
when cestui que trust holds as tenant at will, 70.
right of cestui que trust, when it first accrues, 71, 158.
acquiescence by cestui que trust, 160.

TRUST ESTATE, definition of, 70, 158.
provisions of Statute of Frauds as to, *ib.*
for accumulation, within what time limited, 73.

U.

UNITY OF POSSESSION. *See* tit. POSSESSION.

UNIVERSITY, conusance of plea, when to be demanded, 47.

V.

VACATION, render in, parcel of the last term, 60.

VENIRE DE NOVO, motion for, when to be made, 53.
after arrest of judgment, 54.

VENUE, application to change, when to be made, 48.
on what terms, 49.
to bring back, how limited, 50.

VERDICT, on death of plaintiff, &c. after, when judgment should be entered, 55.

W.

WARRANT OF ATTORNEY, affidavit of the execution of, when to be filed, 51.

WARRANT OF ATTORNEY—*continued.*
when judgment may be entered up, 56.
when leave of Court must be obtained, *ib.*
effect of leave being refused, *ib.*
where judgment more than ten years old, 57.

WATERCOURSE, how affected by unity of possession, 9.
claims in reference to, how limited, 20.
right to, when absolute and indefeasible, 21.
not affected by altering its course, 137.

WAY, RIGHT OF. *See* tit. EASEMENT. RIGHT.

WILL, suits respecting, in Ecclesiastical Court, not affected by statute, 2.
direction in, for payment of debts, effect of, 29.

WRECK, Queen's goods not affected by non-claim, 4.
goods flotsam, jetsam, and ligan, when to be claimed, 82
what parties affected by non-claim, 99.
statute referring to, *ib.*

WRIT. *See* SUMMONS. CAPIAS, &c.
of trial, on judge's order, when to be left, 52.
notice of countermand and continuance, where to be given 53.
of inquiry. *See* tit. PLEADING.

WRITING. *See* tit. ACKNOWLEDGEMENT.

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